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# JOURNAL *of* LIBERTY *and* INTERNATIONAL AFFAIRS

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## SECOND INSTANCE ADMINISTRATIVE COMMISSIONS AND THE ADMINISTRATIVE COURTS EFFICIENCY IN THE REPUBLIC OF NORTH MACEDONIA

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**Abstract:** *The paper aims to evaluate the direct and indirect determinants of the system for administrative legal protection efficiency in the Republic of North Macedonia. For this purpose, the paper analyzes the legal and institutional framework of administrative authorities i.e. the second instance administrative commissions that act on the appeal against the decisions of the first instance administrative bodies, as well as the legal and institutional framework of the Administrative and Higher Administrative Court that provide administrative-judicial protection against administrative acts. The paper assesses internal efficiency determinants for three second instance state commissions that provide legal protection in administrative procedure in the country, independently, as well as the two administrative courts: staff (administrative staff, number of elected members of second instance commissions, number of judges), number of newly formed cases, number of resolved cases and number of unresolved cases at the end of a year.*

**Keywords:** *Administrative Legal Protection; Clearance Rate; Public Sector; Second Instance Administrative Commissions; Administrative Courts; North Macedonia*

## INTRODUCTION

Authorities conducting administrative procedures, decision makers on administrative matters are obligated to secure successful and quality provision of civil rights, legal interests and duties before the state to all parties in i.e. citizens and businesses. Understanding efficiency as a specific reflex of the principle of legality, legal protection against infringement on the former is considered violation of the latter. This means that parties in administrative procedures and administrative dispute are provided right of objection, appeal and law-suit when their rights are violated as a resulted of administrative inefficiency in the same capacity and legal format provided in any other administrative process. Efficiency is considered by many a prime principle of government operation, very much like the principle of effectiveness. Efficiency is a measure of how much each unit of input (every effect, result of any service) costs (expressed in invested time, manpower and other resources), while effectiveness is a measure of quality of such outputs, i.e. how well the desired effect is achieved.

Generally speaking, efficiency may be perceived as a true (real) effect of productiveness achieved by execution of specific tasks, assessed by whether intended goals were met or not, or whether the expected output from an administrative process is the one desired in the moment the process was initiated. In this more generalized context, efficiency may include quality, effectiveness, expediency and speed (economics) of administrative work (Dimitrijevic 2017, 325). This paper presents the results of observed and measured efficiency indicators for the institutions providing legal protection in administrative proceedings in the Republic of North Macedonia<sup>1</sup>, individually per institution as well as aggregated in a panel, observed and measured as a single system for provision of administrative legal protection. The research' goal was to determine direct and indirect predictors of efficiency in the system for administrative legal protection in North Macedonia.

The population or total number of units of observation comprising the system for administrative legal protection in North Macedonia is seven public institutions, five of which are subject of this research. The period of observation for selected institutions was the entirety of their existence since they were established until the end of 2017. Three of these institutions are independent state bodies: State Commission for Decision Making in Second Instance in Administrative Procedures and Labor Disputes, the State Commission for Decision Making in Second Instance Inspection Oversight and State Commission for Appeals in Public Procurements. The other two are courts: Administrative Court Skopje and Higher Administrative Court. This research does not cover the following ministerial commissions: The Commission for Appeals in the Ministry of Labor and Social Policy and the Commission for Appeals in the Ministry of Healthcare.

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<sup>1</sup> Further in the text: North Macedonia.

## THEORETICAL FRAMEWORK

Nashold and Otter argued in 1996 that government policy must take greater account of economic criteria of efficiency and effectiveness. The use of social resources must be continuously subject to the requirement that they be employed efficiently and effectively, implying both a rise in intra-administrative efficiency and also an economic calculation of alternative uses and modes of application (Nashold and Otter 1996, 62).

Finding a common unit of measurement [however] or as Koprić formulated it a 'common meter' poses a methodological challenge when comparing and determining commonalities in administrative systems of different countries (Koprić 2011, 10). The same challenges stand when attempting to compare and measure different aspects of operation between institutions within the same country. Though differences between administrative systems indisputably exist, still certain common traits of internal organization and thus factors that affect productiveness i.e. predictors of it can be found and subjected to the same working principles.

Let us take the study by Gomes, Guaimaraes and Akutsu from 2016 when they measured the effect that employees have on productiveness of courts in Brazil. Despite evident variation in the internal workings between courts from country to country stemming from institutional idiosyncrasies, traits of the political systems and contemporary political context in the state, even in very similar judicial systems the authors justified studying the effects of staff on the productiveness of courts. Their research answers how (if at all) one can influence judicial productiveness by employing or dismissing staff (Gomes, Guaimaraes and Akutsu 2016, 12). The category 'staff' in their study included the entire labor force involved in judicial proceedings comprising judges and administrative servants. This approach is inclined to the general theory of productiveness assuming that efficient allocation of labor and capital in an organization has positive effects on the organization's productiveness (OECD 2018).

Technical solutions for comparison of different judicial systems are present in the practice of the European Commission' EU Judicial Scoreboard, as well the CEPEJ publication by the Council of Europe. Both utilize the same efficiency indicators: clearance rate, disposition time and backlog (EU Justice Scoreboard 2018, 10-16). All three are accepted as applicable efficiency indicators regardless of specifics and internal organization of judicial system. From this position we established the assumption that as long the nature of productive process is not significantly different between two or more organizations (any organization), their productiveness i.e. efficiency can be measured using the same set of indicators. In this studies sample, state bodies providing appellate protection in administrative procedures and the administrative courts providing legal protection in administrative disputes essentially perform a similar/near identical task which is overseeing the legality of an individual administrative act being contested before it. The act being contested is one made by an administrative authority deciding on civil rights and duties. Thus, we argue their performance may be measuring utilizing a same set of indicators on the



sample as whole as well by status, hence forming two comparable groups. Statistically significant differences in the productivity of each group (if any exist) may be ascribed to the specifics of internal organization, as well as external factors such as the legal framework conditioning each group of institutions to different regime of operating. State bodies are in essence administrative organizations and as such subjected to general administrative procedure, characterized by prescribed (fixed) deadlines. Administrative courts do not have an explicit deadline in which they must process a case and reach a verdict (with exception to cases related to elections, misdemeanor or other urgent cases), however judges are given a monthly quota expressed in a number of minimum cases each judge must resolve in every month. Other external factors of productivity specific to each institution, which are not quantitatively described in this study but were noted during interviews by staff working in the observed institutions include: working conditions, the quality of intra-institutional communications, do institutions deliver cases between them-selves quickly and without errors in documentation, ICT and other equipment at their disposal etc. (Gocevski 2017, 45, 47, 50, 69, 73).

The working hypothesis (H) is that institutional efficiency (dependent variables  $Y_1$ ,  $Y_2$ ,  $Y_3$  per individual institution) achieved through adequate allocation of labor and resources affects systemic efficiency (regression coefficient for each  $Y$  in a multivariate linear regression, of  $X_1$  and  $X_2$  explain a larger variance in the value of  $Y$ , i.e. is greater than 0.5, and probability that beta coefficients for  $X_1$  and  $X_2$  are chance results is low enough, i.e.  $p < 0.05$ ).

A null Hypothesis would be that institutional efficiency cannot be explained in meaningful and significant way by the independent variables, nor can the systemic efficiency be explained in a meaningful and significant way by  $X_1$  and  $X_2$  of each institution, per year and placed in a panel regression (expected  $R^2$  for  $X_1$  and  $X_2$  is below .05, or the probability that beta coefficients for  $X_1$  and  $X_2$  are chance results is too high, i.e.  $p > 0.05$ ).

The adequacy of internal allocation of staff and resources is explained by the amount of work per institution, per number of staff, for each observed year (explanatory variables). Other factors such as the level of ICT utilization, quality of inter-institutional communication channels have an intervening effect acting as moderators of systemic efficiency (Intervening variables) and thus explain some of the value (or variance in values) of performance indicators ( $Y_1$ ,  $Y_2$ ,  $Y_3$ ).<sup>2</sup>

Research questions set are:

**Rq1:** Do the independent variables in this research affect institutional efficiency equally and in a consistent manner regardless of the type of institution?

**Rq2:** Does the presence of prescribed deadlines or quotas per employee affect institutional efficiency differently?

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<sup>2</sup> More on institutional productivity, with similar variables: Gomes et al., 2016, Lindsay and McQuaid 2008; Quist 2016.

**Independent (X) and explanatory (e) variables:**

X1, number of decision makers: judges in courts, members of commissions

X2, number of administrative servants

e1, number of administrative servants per decision maker

e2, number of newly formed cases

e3, backlog (stock of unresolved cases) at the end of the previous year

e4, number of cases solved in the current year

e5, unresolved cases at the end of the current year

e6, total number of cases in the current year

e7, workload per decision maker

e8, workload per administrative servant

**Moderator (Int) and dependent (Y) variables:**

Y1, Clearance rate ( $e4/e2$ ) [selected variable in testing]

Y2, Disposition time ( $e5/e4*365$ ) [not tested]

Y3, Backlog ( $e5/\text{population of RNM} * 100$ ) [not tested]

Int – qualitatively obtained information, not present in the quantitative analysis: working conditions, quality of inter-institutional communication, regularity of delivered documents from one institution to another) etc.

X1, X2 → e → Int → Y

Hypothesis diagram

## OVERVIEW OF OBSERVED POPULATION

### *State Commission for Appeals in Public Procurements*

State Commission for Appeals in Public Procurements was established 2007 and began operating in 2008 as an independent state body. The same status applies to the two other commissions observed in this study. The Commission is composed of a president and four members elected by the national assembly to a five-year mandate. It is competent to decide on appeals in public procurement procedures, against administrative decisions to awarded public procurement contracts, concessions, and public private partnership. Public procurement procedures are considered a special type of administrative procedures. Legal protection is provided in all phases of the process, from publication of the call for bids to the award of contract.<sup>3</sup> The commission is obligated with a prescribed deadline to decide within 15 days of forming a case, by decision in the form of an 'individual administrative act'.<sup>4</sup> Said decision is considered final but not conclusive, meaning that a dissatisfied party no longer has any legal remedies in administrative procedure but is however permitted to initiate an administrative dispute, before an administrative court of first instance. The courts' verdict can then be appealed before the Higher Administrative Court. Administrative disputes are considered judicial proceedings, and when deciding on public procurement cases proceedings are considered urgent.

Table 1: State Commission for Appeals in Public Procurements

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Members of the Commission	5	5	5	5	5	5	5	5	5	5
Administrative Servants	5	5	6	8	9	9	10	15	13	12
Cases from Previous year	0	48	48	48	24	24	28	16	16	17
Newly formed cases	530	1044	820	642	561	509	563	610	607	544
Total workload (total cases being processed)	530	1092	868	690	585	533	591	626	623	561
Solved	482	996	820	666	561	505	575	610	606	548
Unsolved	48	48	48	24	24	28	16	16	17	13
Disposition time	36.3	17.6	21.4	13.2	15.6	20.2	10.2	9.6	10.2	8.7
Clearance rate	0.9	1.0	1.00	1.04	1.00	0.99	1.02	1.00	1.00	1.01
Back log. Rate of unsolved cases per 100 out of the total population	0.0	0.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

<sup>3</sup>Before this Commission was established, dissatisfied parties in public procurement procedures known as economic operators, could contest the decision to elect a most favorable by appealing to a second instance commission formed within the Government of the state, see: Gocevski 2017, 25.

<sup>4</sup>Art. 224 para. 6 Law on Public Procurements (Official Gazette of RM no. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011).

## *State Commission for Decision Making in Second Instance Administrative Procedure and Labor Disputes*

The State Commission for Decision Making in Second Instance Administrative Procedure and Labor Disputes (Akimovska Maletic and Dimitrijevic 2015, 493-494)<sup>5</sup> is an independent state body. Its composition includes a president and ten members elected and dissolved by the national assembly, upon nomination by the Committee for Elections and Appointments to a five-year mandate. The competence of this commission extends to deciding on appeals against first instance administrative decisions made by ministries, other state bodies of administration, organizations with public competencies and other bodies of state; and deciding on appeals against decisions made in labor disputes between public institutions as employers and their employees with the status of public sector employees [except employees with the status of administrative servants, who realize this right before another body of state, the Agency for Administration]; deciding on appeals against reward abolishment acts by the Ministry of Interior; and deciding on appeals against first instance decisions by the Securities Commission.

Regarding labor disputes, the competence of this commission extends to appellative protection of employment rights to public service providers, persons with special authorization and logistical staff in large variety of public institutions: Ministry of Internal Affairs (uniformed and civilian personnel), the Army, prison police, public healthcare institutions etc. The only administrative servants that protect their employment rights before this body are those employed in the Agency for Administration, which is in fact competent to provide appellative protection to all other administrative servants.

The full administrative competencies of this commission are derived from over 150 laws governing special administrative procedures: pension and invalid insurance, education, culture, transport and connections, legalizing infrastructure and buildings [unlawfully constructed], privatizing construction land etc.<sup>6</sup> Before the commission was established, this competence was vested in various appellative commissions within the Government of the state (Gocevski 2017, 30). This commission is obligated with a prescribed general deadline, to decide within two months of receiving an appeal, unless otherwise mandated by a special law to decide within a shorter deadline. When deciding upon an appeal against brought against a decision once nullified in a previous proceeding, the commission is obligated to decide in full competence i.e. merit and resolve the case in full. The administrative decisions [considered second instance] by this commission are considered final but not conclusive and may be contested in administrative dispute before an Administrative court of first instance. Decisions the commission makes in labor disputes may be contested before a civil labor court.

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<sup>5</sup>State Commission was established with the Law on Establishment of the State Commission for Decision Making in Second Instance Administrative Procedure and Labor Disputes (Official Gazette of RM no. 51/11, 148/13, 41/14, 130/14, 53/2016 and 11/2018).

<sup>6</sup>From 2014 to 2015 it was competent to decide in second instance procedures of inspection oversight.



**Table 2: State Commission for Decision Making in Second Instance Administrative Procedures and Employment Disputes**

	2012	2013	2014	2015	2016	2017
Members of the Commission	7	7	11	11	11	11
Administrative Servants	22	25	49	53	48	65
Cases from Previous year	3539	3727	1763	1425	791	
Newly formed cases	11472	7147	5427	4667	4883	3921
Total workload (total cases being processed)	11472	7264	8365	6064	5517	4756
Solved	8619	3725	4104	4171	4092	4408
Unsolved	2853	3422	1323	496	791	754
Disposition time	120.8	335.3	117.7	43.4	70.6	62.4
Clearance rate	0.75	0.52	0.76	0.89	0.84	1.12
Back log. Rate of unsolved cases per 100 out of the total population	0.14	0.17	0.07	0.02	0.04	0.04

### *State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors*

The State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors was established in 2015,<sup>7</sup> as an independent state body. Its composition includes a president and six members elected and dissolved by the national assembly for a mandate of five years. These commissions' competencies extend to deciding on appeals against administrative decisions made in first instance inspection oversight; and on appeals against administrative decisions on misdemeanors made by [first instance] misdemeanor authorities. It has a prescribed deadline to decide within two months of receiving an appeal. Just as the previous commission (see 3.2) when deciding on an appeal brought against a decision, once nullified in a previous proceeding it must resolve the case in full merit.

The commissions' decisions are considered [second instance administrative] final but not conclusive and may be contested in administrative dispute before an Administrative court of first instance, followed by the right of appeal before the Higher Administrative Court. The plaintiff's lawsuit does not postpone enforcement of the commissions' decision.<sup>8</sup>

<sup>7</sup>Law on Establishment of the State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors (Official Gazette of RM no. 130/2014, 53/2016 and 11/2018). Decisions of the Constitutional Court of RM: U. br. 127/2014, September 30<sup>th</sup>, 2015, published in „Official Gazette of RM no. 183/2015 and U. br. 63/2017 ca 20. June 20<sup>th</sup>, 2018, published in „Official Gazette of RM no. 122/2018.

<sup>8</sup>Art. 9, point. 6 and point. 7 and Art. 11, Law on Establishment of the State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors.

**Table 3: State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanor**

	2016	2017
Members of the Commission	7	7
Administrative Servants	27	31
Cases from Previous year	349	901
Newly formed cases	3589	3170
Total workload (total cases being processed)	3938	4071
Solved	3037	2903
Unsolved	901	1092
Disposition time	108.29	137.30
Clearance rate	0.85	0.92
Back log. Rate of unsolved cases per 100 out of the total population	0.04	0.05

### *Administrative Court and Higher Administrative Court*

Formally the right to administrative dispute was introduced in Macedonian law during the early 1970s under the Supreme Court's jurisdiction however specialized judiciary was introduced in North Macedonia by a constitutional amendment (XXV) in 2005, providing that judicial power in the country be exercised by courts that are independent and autonomous.<sup>9</sup> The constitution [base text] did not however prescribe the variety of courts, their types, and scope of competence, internal organization and procedures for operation. These issues were left to be determined by an organic law. Constitutional guarantees for legal protection were further operationalized by the Law on General Administrative Procedure, several sectoral Laws and Law on Administrative Disputes (Davkova and Deskoska 2017, 220).

The latter prescribes that administrative disputes be resolved before the Administrative Court, the Higher Administrative Court and the Supreme Court of [North] Macedonia.<sup>10</sup> The Administrative Court is a court of first instance, deciding on lawsuits against final (non-conclusive) administrative decisions by state funds, public enterprises, public institutions, organizations and communities with public competencies that sign administrative contracts, decisions by municipal mayors when deciding on administrative matters and signs administrative contracts.

<sup>9</sup> The country carried the name North Macedonia from February 2019. From 1991 to 2019 the country bore the name Former Yugoslav Republic of Macedonia internationally, and internally it was called just Republic of Macedonia. Before 1991, the country's name was Socialist Federal Republic of Macedonia as a member republic of the Yugoslav federation, and for a brief period in after world war two it was self-declared the Peoples Republic of Macedonia.

<sup>10</sup> Law on Administrative Disputes (Official Gazette of RM no. 62/2006 and 150/2010).

Table 4: Administrative Court

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Judges	22	25	25	30	30	32	29	29	29	29
Court Servants	33	50	47	44	45	55	58	58	58	58
Cases from Previous year	5804	9154	10340	13866	15980	14228	12461	9786	9090	9156
Newly formed cases	8497	9043	9792	11768	14675	12754	13585	15011	13240	11306
Total workload (total cases being processed)	14301	18197	20132	25726	30591	26907	26138	25681	22978	20462
Solved	5147	7857	6322	9746	16363	14544	15395	15895	13888	12858
Unsolved	9154	10340	13810	15980	14228	12461	10743	10734	9786	7604
Disposition time	649.2	480.3	797.3	598.5	317.4	312.7	254.7	246.5	257.2	215.9
Clearance rate	0.61	0.87	0.65	0.83	1.12	1.14	1.13	1.06	1.05	1.14
Back log. Rate of unsolved cases per 100 out of the total population	0.45	0.51	0.68	0.79	0.70	0.62	0.53	0.53	0.48	0.38

The Higher Administrative Court is a second instance or appellate court, deciding upon appeals against verdicts made by the Administrative court in first instance. The Supreme Court has a special competence only for extraordinary legal instruments, against verdicts of the Higher Administrative Court.<sup>11</sup>

The number of judges in the administrative courts is determined by Judicial Council of North Macedonia. In first instance, administrative disputes are carried out by an individual judge or judicial council of three judges. Ordinarily, most cases are adjudicated in council. An individual judge resides over misdemeanor cases, which are sanctioned by fines lower than 5.00 euro, as well as misdemeanors for which do not include confiscation of items, prohibition of professional conduct and ban of working permission.

The Higher Administrative Court resides in judicial councils of three judges.<sup>12</sup> Both courts are issued monthly quotas as minimal required number of resolved cases per judge for one month, by the Judicial Council. Between 2008 and 2016 the monthly quota for a judge in the Administrative Court ranged from 30 to 43 cases, while the quota for judges in the Higher Administrative Court varied around 22 cases per month (Gocevski 2017, 45).

Table 5. Higher Administrative Court

<sup>11</sup> Art. 16 and Art. 17.

<sup>12</sup> Art. 18, 18-a, 188-6, 18-B, 18-r.

	2011	2012	2013	2014	2015	2016	2017
Judges	14	12	11	11	11	13	12
Court Servants	10	11	13	14	13	13	13
Cases from Previous year	/	5	40	87	82	1095	990
Newly formed cases	55	1750	1982	3948	4349	4388	5452
Total workload (total cases being processed)	55	1755	2022	4035	4431	5483	6442
Solved	50	1715	1935	3953	3336	4492	5692
Unsolved	5	40	87	82	82	990	750
Disposition time	36.5	8.5	16.4	7.6	9.0	80.4	48.1
Clearance rate	0.91	0.98	0.98	1.00	0.77	1.02	1.04
Back log. Rate of unsolved cases per 100 out of the total population	0.00	0.00	0.00	0.00	0.00	0.05	0.04

## METHODOLOGY

This research was performed using a mixed method approach, by accessing to and processing quantitative and qualitative data sources (Barakso, Sabet and Schaffner 2014, 87, 88, 190, 110, 112). The obtained quantitative data was recorded as interval data consisting of both integers and floating points (continuous data) expressed as: number of employees, number of cases and derived efficiency rates. The qualitative data was obtained from: statements recorded during interviews, analyzing documented data by the observed institutions (InDesk).

A unit of observation in the research was the performance of each institution in one year (country-year observation), with the available staff and workload during that year, effectively representing a cross-sectional analysis for several years. All institutions were observed for the entirety of their existence since they were established/began operation until the end of 2018. All units of observation were monitored for the same parameters, throughout time thus combining longitudinal data with cross-sectional data into a time series data i.e. also known as a panel study.

The effect of intervening variables, on the amount of influence employees have on institutional performance indicators was tested by grouping the observed institutions by status (courts and state commissions, as each is governed by a different legal regime while both in essence oversee the legality of administrative decisions), and looking for statistically significant differences in the performance indicators of the two groups.

Techniques used for quantitative data processing are fixed-effect panel data estimation (or multivariate linear 'panel' regression) and a means comparison using an independent sample t-test (Moore 2000, 390, 401, 406).



## RESULTS FROM STATISTICAL ANALYSIS

### Fixed Effects Panel Estimation Results

Units of analysis are the five institutions. Rather than to look at differences between the 5 institutions at a particular year, the fixed-effects panel data estimation looks at differences within these institutions over time. This way we also attempt to avoid risk of reverse causality in our inferences (Barakso, Sabet and Schaffner 2014, 171-172; Moore 2000). The number of observations may seem small for a panel regression analysis, however in this particular study they represent the entire population for a time series, encompassing both longitudinal and cross-sectional data, and not a sample size. Both panel results were tested for robustness to ensure consistent results in the inferred relationship between the independent variables (x1-decisionmakers and x2-servants) and the tested dependent variable (Y1-clearance rate) regardless of other factors or specifics of the model.

A static panel fixed effect model of the clearance rate - presented in Table 6 - demonstrates that staff, both decision makers (x1,  $\beta=0.034$ ,  $p=0.012$ ) and servants (x2  $\beta=0.007$ ,  $p=0.002$ ) in all five institutions are significant predictors of clearance rates (Y1) and the regression coefficient explain 65% ( $R^2 = 0.65$ ) of the variance in clearance rates. The remaining 35% of the variance we deduce can be explained by other factors, not directly observable from our study, but confirmed by data obtained via interviews and at premise survey of premises.

Table 6: Fixed Effect Clearance Rate x1 x2

Fixed-effects (within) regression				Number of obs	=	35
Group variable: inst				Number of groups	=	5
R-sq: within	=	0.6564		Obs per group: min	=	2
between	=	0.0002		avg	=	7.0
overall	=	0.0209		max	=	10
corr(u_i, Xb) = -0.9606				F(2, 4)	=	25.73
				Prob > F	=	0.0052
(Std. Err. adjusted for 5 clusters in inst)						
clearance	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
x1	.0342745	.0078256	4.38	0.012	.0125473	.0560018
x2	.0077244	.0011176	6.91	0.002	.0046215	.0108274
_cons	.2404355	.1245583	1.93	0.126	-.1053939	.5862649
sigma_u	.42876152					
sigma_e	.08863203					
rho	.9590195	(fraction of variance due to u_i)				

We also use a dynamic panel data approach, which considers the influence of previous years to the performance and behavior of organizations. As presented in Table 7, the coefficient on the staff has higher statistical significance than decision makers ( $x1 \beta = 0.4$ ,  $p=0.002$ ) and servants ( $x2 \beta=0.009$ ,  $p=0.001$ ) are predictors of clearance rates ( $Y1$ ). The independent variables in the model explain 72.5% ( $R^2=0.725$ ) of variance in clearance rates, leaving less than 30% of the variance to be explained by other factors. We assume the remaining variance can be explained by the factors expressed by judges, commission members and administrative servants during interviews such as working conditions, the quality of intra-institutional communications, do institutions deliver cases between themselves quickly and without errors in documentation, ICT and other equipment at their disposal but we cannot test the individual effect of each aforementioned factor, hence they cumulative represent a deduced value as an intervening variable.

Table 7: Fixed Effect Clearance to X1 X2 Clearance Lagged From Previous

Fixed-effects (within) regression		Number of obs	=	30	
Group variable: inst		Number of groups	=	5	
R-sq: within = 0.7250		Obs per group: min =		1	
between = 0.0108		avg =		6.0	
overall = 0.0348		max =		9	
corr(u_i, Xb) = -0.9744		F(3,4)	=	2230.05	
		Prob > F	=	0.0000	
(Std. Err. adjusted for 5 clusters in inst)					
clearance	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]
clearance					
L1.	.1509775	.0710818	2.12	0.101	-.0463773 .3483323
x1	.0405308	.0057107	7.10	0.002	.0246754 .0563862
x2	.0093946	.0010815	8.69	0.001	.0063919 .0123972
_cons	-.0457525	.0172508	-2.65	0.057	-.0936483 .0021433
sigma_u	.51683225				
sigma_e	.07798796				
rho	.97773729	(fraction of variance due to u_i)			

What this means is that more staff will affect positively performance indicators but not by much, and not on long term. Other measures should be taken to improve intra institutional and inter-institutional communication. When interpreting these results, one must consider inherent risks every causal inference confronts in a large  $N$  study using cross-sectional data. We acknowledge two sources of potential endogeneity: possible reverse causality and omitted variable bias (Stojkov 2009, 72-75).

This study attempts to address the problem of the omitted variable bias by including as many possible external factors which may affect productivity, expressed as meaningful by judges, commission members and administrative servants employed in each of the observed institutions in the sample. We also try to avoid stepping into the reversed causal inference trap (as a separate source of endogeneity) by carefully formulating a hypothesis which explains whether the number of employees affects productiveness expressed by Y1-clearance rate, and how much of the variance in clearance rates are explained by the independent variables. Both diagrams show that x1 and x2 do explain a large share of clearance rates – we attribute the remaining share of variance in Y1 to other factors. We also do not reject a possible and very probable explanation that faced with increasing workloads resulting with a decrease of productivity indicators institutions did in fact increase the number of staff thus acting reactively. But we do strongly support the claim that productivity is not necessarily increased only by employing new staff- but rather a meaningful degree of productivity can be achieved by improving working conditions, inter-institutional communication, digitalization of document management within and between institutions etc. We also support the claim that institutions adapt to their workload over time.

In times of excess workloads they can increase working hours, or monthly quotas, while in periods of decreased workloads they decrease the amount of cases per available decision maker/team of civil servants or for judges they lower monthly quotas – thus they may exhibit similar clearance rates regardless of actual workload, even though they are spending more on salaries and (cumulatively) doing less. It is only in significant drops in clearance rates and increase in backlogs that one may support additional staffing.

### *Means Comparison between State Commissions and Administrative Courts Performance Indicators (independent sample t-tests)*

Comparing mean values for select performance indicators for statistically significant differences ( $*p < .05$ ,  $**p < .01$ )<sup>13</sup> between courts and state bodies that provide legal protection in administrative procedures in North Macedonia, we obtained results for six parameters in the observed institutions (Table 8).

**Table 8: Means Comparison of Performance Indicators**

	<i>Courts</i>	<i>Commissions</i>
Clearance Rate	0.96	0.92
Workload per decision maker	597.86	411.45
Disposition time	254.62**	65.37**
Average solved cases in one year	8187.53**	2301.56**
Number of servants per decision maker	1.49**	2.94**
Workload per servant	380.08**	135.42**

<sup>13</sup> If there is no star, differences are not considered statistically significant.

**Table 9:** Clearance Rate

	<i>Courts</i>	<i>Commissions</i>
Mean	0.96	0.92
Variance	0.03	0.02
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	31.00	
t Stat	0.72	
P(T <=t) one-tail	0.24	
t Critical one-tail	1.70	
P(T <=t) two-tail	0.48	
t Critical two-tail	2.04	

**Table 10:** Disposition Time

	<i>Courts</i>	<i>Commissions</i>
Mean	254.62	64.37
Variance	61958.97	6524.16
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	19.00	
t Stat	3.01	
P(T <=t) one-tail	0.00	
t Critical one-tail	1.73	
P(T <=t) two-tail	0.01	
t Critical two-tail	2.09	

**Table 11:** Workload per decision maker

	<i>Judges</i>	<i>Members of Commissions</i>
Mean	597.86	411.45
Variance	89487.88	169514.20
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	31.00	
t Stat	1.54	
P(T <=t) one-tail	0.07	
t Critical one-tail	1.70	
P(T <=t) two-tail	0.13	
t Critical two-tail	2.04	

**Table 12:** Resolved Cases

	<i>Judges</i>	<i>Commissions</i>
Mean	8187.53	2301.56
Variance	31045491.26	5009412.50
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	21.00	
t Stat	4.06	
P(T<=t) one-tail	0.00	
t Critical one-tail	1.72	
P(T<=t) two-tail	0.00	
t Critical two-tail	2.08	

**Table 13:** Number of servants per decision maker

	<i>Courts</i>	<i>Commissions</i>
Mean	1.49	2.94
Variance	0.20	2.14
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	20.00	
t Stat	-4.01	
P(T<=t) one-tail	0.00	
t Critical one-tail	1.72	
P(T<=t) two-tail	0.00	
t Critical two-tail	2.09	

Clearly courts have a larger volume of work compared to any one commission. This is a systemic consequence and has little to do with the commissions themselves. There is only one first instance administrative court and one second instance administrative court competent to reside over all administrative disputes. The Higher Administrative Court resides over all appeals against the first instance court verdicts. Second instance decision making i.e. appellate protection in administrative procedures is functionally decentralized between three state bodies (the observed commissions) and two ministerial commissions (not observed in this study) so it's no wonder said bodies have a smaller volume of work individually. However, the visible differences in volume of work do not significantly affect productiveness, which is deduced from the fact that there is no significant difference in the clearance rates between the two groups of institutions.

A proposed explanation for this is that all institutions after a period adapt to their workload and working conditions (in North Macedonia) to achieve a satisfactory [after a while similar between observed institutions] level of efficiency.

An expected discrepancy between disposition times is also evident for the two groups. Understandably, state bodies are subject to prescribed deadlines and they apparently do as the mean value for their dispositions close to the longest prescribed deadline of 60 days, because this deadline applies to a largest number of cases. Administrative courts resolve a case between 8 and 9 months. The volume of work per judge however is not significantly different from the number of cases per member of commission. The mean values for workloads per decision maker are visibly different between the two groups, however due to their large internal variance (the difference from the smallest workload per judge and the smallest workload per member of commission is too wide from their largest values) we derive that this mean number is circumstantial in both cases – a result obtained by chance, which may significantly change if the circumstances change even slightly.

It is evident that judges in administrative courts have fewer administrative servants at their disposal to aid in processing cases, a circumstance we consider meaningful because it inhibits judicial productivity, and thus we predict that an increase in administrative staff directly assisting case processing will positively affect productivity more significantly than an increase in the number of judges.

Although administrative servants in commissions are encumbered by a lower workload per servant than court servants, we still deduce a similar conclusion. A higher number of administrative servants involved in case processing will affect the commissions productivity better (if internally allocated rationally) than an increase if the number of commission members. However, the impact increasing administrative staff in commission we expect to be smaller than an increase of court servants will have for judicial performance.

## CONCLUSION

The preferred mechanism to tackle increasing workloads in the observed institutions obviously was increasing staff. As more cases were formed and/or residual cases from previous years accumulated, commissions and administrative courts hired more people (respectively). Having an understanding of the dynamics of administrative legal protection, we posit ourselves that institutions do not have an influence to the amount of newly formed cases per year as they cannot predict how many dissatisfied parties will object to administrative decisions. Nor can the courts precisely anticipate how many lawsuits will be made against the second instance decisions made by the commissions covered by this study. They can only influence their internal processes and to a limited degree the communication they have with other institutions. Thus, they can only find ways to adapt to a rise or drop in workloads, which since 2008 appears to be mostly by employment – and to a lesser degree

(but difficult to measure accurately) to internal optimizations. We thus infer that the institutions covered by this study employ as a reaction not as anticipatory action.

Employees (decision makers and staff) explain up to 72.5% of the variance in productivity in the observed population. Employing new staff will not necessarily improve productiveness; on the contrary it might bring it down and rise operating costs. Workload per administrative servant is not proportional to the workload per decision maker. The same disproportion applies to internal allocation of labor in the observed commissions. A single case typically moves through two or more tiers of control meaning that it is processed in various levels by two or more servants, in other words to ensure quality they allocate more manpower to (re)do the same cases, before finally it is adopted by the commission members.

Administrative courts also show the tendency to increase the number of judges with rising workloads. However, a rise in the number of staff does not appear to significantly follow an increase in clearance rates. Disposition times and backlog show a tendency to increase as number of staff increases.

Complementing these tendencies to panel results we infer that when faced with higher workloads, courts hired more judges and servants until productiveness appeared to increase to meet the challenge.

All observed institutions exhibited reactive behavior when faced with increasing workloads rather than programmatic and anticipatory.

Administrative courts undisputedly have larger volumes of work than each commission, which is explained by their position and role in the states administrative system. Substantially, administrative courts are competent to provide legal protection for [virtually] all administrative cases, while commissions are functionally decentralized thus are competent to provide legal protection in fewer sectors of administrative affairs. Even the commission deciding in second instance administrative procedure, with the broadest specter of competence deriving from over 150 laws still averages to half the workload of the Administrative Court (in first instance), though we must accept that in 2017 the commission also had half the staff compared to the court. Pressure affecting the working process in commissions comes from prescribed deadlines, thus even though faced with lower workloads commission employees are forced to resolve them in determined and significantly shorter time frames (15 to 60 days). Administrative judges on other hand are pressed to meet a monthly quota. Research however showed that regardless organizational format, internal or external factors, after some time (3-4 years) institutions balance out inputs and outputs achieving (with more or less success) efficiency. This is seen in positive productivity indicators which rise following the first few years of the institutions' establishment, and there is no significant difference in the performance indicators between courts and commissions. If we were to comment contemporary staffing conditions, tendencies could justify employing more administrative servants in the administrative court of first instance, however until a 1:1 ratio between judges and servants directly involved in case proceedings i.e. 28 judges and 28 servants, and only then allocating remaining administrative staff to other critical positions we




predict administrative judges will rely more on personal capacities rather than on support by their administration to resolve cases. Thus it is difficult to with certainty predict the effect one more administrative servant may have on court productivity.

Improving external factors which explain almost 30% of the variance in clearance rates remain a general recommendation because they are to a large degree beyond the scope of influence by the institutions themselves. Such recommendations include fewer and less frequent changes to the legal framework, improving inter-institutional communication channels thus speeding up response times between them, digitizing document management etc. Possibly, one may recommend physically locating all five institutions within one building sharing a single archive.

In summary, we infer the independent variables affect productivity in the observed institutions regardless of their organizational format and specific legal regime. We cannot support that external factors affect commission productivity differently than they affect courts.

Evident differences in operational practices and volume of work are nominal only, resulting from circumstance and are not related to the type of organization. Undisputedly, the number of employees affects productivity but is not the only affecting factor. Internal allocation of labor, internal procedures, quality of internal communication channels [proper management] as well as inter-institutional communications contributes to about a third of the productivity.

We firmly claim that the arguments support the working hypothesis (the null hypothesis is unsupported) and adequate allocation of labor and workloads resulting in a degree of productivity of one institution, also affects overall systemic efficiency in the provision of legal protection in administrative affairs in North Macedonia. Argument also support the assumption, that properly developed inter-institutional channels expedite exchange of documents and their quality, thus minimizing data loss, chance of errors and speeds up overall proceedings, hence enabling courts and commissions to execute their tasks in case resolution quicker and with more accuracy. 

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## RUSSIA'S NEW SOFT POWER: THE MIR CARD SYSTEM

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**Abstract:** *After the onset of Western sanctions in 2014, the Russian National Card Payment System (NSPK) and its corresponding Mir bank cards launched the following year. Five years later, estimates show that 56 million people are using Mir cards, more than 20 percent of Russia's bank card market and will be operational in twelve foreign countries. Traditionally, scholars have examined Russian soft power as aiming to integrate post-Soviet countries with Russia and Central Asian countries through promoting beneficial economic and cultural relationships. With the Mir card system, Russia is seeking primarily to become less dependent on a dollar-dominated financial system, as well as to avoid potentially increasing US sanctions and to overarchingly seek to build a multipolar system. This research will investigate the Mir card system.*

**Keywords:** *Soft Power; Russia; Financial Diplomacy; Multipolarity; Former Soviet Union*

### INTRODUCTION

In recent years, Russian soft power has gained interest amongst the scholarly community, but literature on the subject has been limited. Existing literature focuses on theoretical conceptions, effectiveness, and usage of soft power in the post-Soviet space (Kiseleva 2015). These analyses have looked back at Russian soft power actions mostly within the Western framework of soft power as established by Joseph Nye (Cheskin 2017, Dolinskiy 2013, Makarychev 2011, Parshin 2013, Rukavishnikov 2010, Saari 2014, Simons 2014, Hudson 2015). However, approaching it from this angle inherently misses the broad nature of Russian soft power and implies a negative normative comparison against soft power approaches taken by Western powers such as the United States, France, and Germany. This analysis instead focuses on a specific instance of Russian soft power, namely the Mir Card system,

outside of the normative biases of a Western framework, which here refers to a set of activities of a foreign policy strategy that is based on the principle that financial, economic and political interests reinforce one another and thus should be seen holistically.

In December 2015, the Central Bank of Russia introduced Mir cards domestically as a national alternative to Visa and Mastercard. While Russia has many official reasons for adopting the Mir card system, it is, first and foremost, a soft power tactic aimed internationally as a counter-alternative to Western financial frameworks. Russia's current soft power is centered on upgrading the status of the Mir card system in the international financial framework, which in practical terms means attempting to subvert the dollar-dominated system. This process is distinguished by two main features. First, it is a blatant act of subversion against American and European sanctions. Second, it is but one step in a larger strategy to build a more multipolar system where Russia holds a larger share of power.

This article will begin by exploring the current literature that surrounds Russian soft power, as discussed by a variety of scholars. Further, it will introduce the Mir card system and investigate the Mir Card system as a specific instance of Russian soft power.

## LITERATURE REVIEW

Soft power is a term widely used amongst diplomats, academics and practitioners that refers to the power of attraction in world politics (Nye 2004; 2011). While soft power originated with Joseph Nye's original work, which distinguished coercion (hard power) against attraction (soft power), the literature has considerably evolved since that point (Nye 2011). There is fierce debate amongst scholars on how to engage with the discourse of soft power in foreign policy analysis, what relevance it has amongst power literature as well as whether it has any utility at all (Layne 2010, Gallarotti 2010, Warren 2014). Moreover, some critical IR scholars view soft power as discriminatory because Nye has suggested US and Western values are inherently attractive as opposed to other values such as those preferred by more autocratic regimes (Lukes 2005, 10, Scott-Smith, 2010, 167, Lebow 2005, 522). Amongst these debates, however, scholars agree that soft power is "an ambiguous signifier with a nebulous theoretical core" (Kern 2011, 66). This vague theoretical center has resulted in many different approaches, demands for more conceptual discussions, and understandings of soft power, particularly as states such as Russia use the term differently (BiallyMattern 2005, Reich and Lebow 2014). According to Nye and traditional soft power scholars, Russia lacks an overall soft power strategy. So far, literature surrounding Russian soft power has focused on the usage of Russian soft power in the post-Soviet space and its overall effectiveness (Cheskin 2017, Dolinskiy 2013, Makarychev 2011, Parshin 2013, Rukavishnikov 2010, Saari 2014 and Simons 2014). This is, in no small part, due to a "lack of cooperation between soft power 'tools,' but also in the fact that the visions, objectives and narratives to (re-)cultivating Russian soft power are not always complementary" (Hudson 2015, 334).

This lack of soft power strategy, however, misses that Russia defines its soft power in a way fundamentally different than Nye. According to Russian President Putin (2012), soft power is “a set of instruments and methods used to achieve foreign policy goals without resorting to military means, but with the help of information and other instruments of influence.” This definition is markedly different than Nye’s. Specifically, Putin here only specifies that military means is what makes an action an instrument of hard power rather than soft. In two speeches in 2013 to the Valdai Discussion Club and to the Kremlin, Putin, for example, focused on eulogizing the traditional moral virtues of Russian civilization, making a distinction between the moral integrity of Russia against the decadent morality of the West as part of his soft power approach (Putin 2013a, Putin 2013b). In short, Russian soft power has evolved differently from Nye’s definition and has a broader signifier that takes many tools under its umbrella to make the Russian state and its policies more attractive.

This article aims to investigate the Mir Card System as a specific instance of Russian soft power by addressing two foreign policy objectives that it aims to achieve, namely avoiding international sanctions and abandoning the dollar-dominated system while addressing how its origins match up with its effectiveness. Throughout, I will use a primarily qualitative method of analysis.

## THE MIR CARD SYSTEM

In December 2015, the Central Bank of Russia introduced Mir cards domestically as a national alternative to Visa and Mastercard. Currently, there are over 56 million Mir debit cards and 1.3 million credit cards, which have been issued by over 140 banks (Global Data 2019). More than half of these cards were issued by Sberbank (Devonshire-Ellis 2018). According to the National Payment Card System (NSPK), some of the benefits are:

- that transactions cannot be suspended, and no external political or economic factors will adversely impact them;
- that they will assist moving the Russian economy to a predominantly cashless payment method; and
- that the Mir cards will be reliable and independent from foreign companies (National Payment Card System).

Moreover, the NSPK states that it will promote the Mir cards both nationally and internationally. According to Global Data, the domestic adoption of the Mir Cards has been so successful due to concerted government efforts, large scale card issuance and merchant acceptance. This success is in no small part because Mir cards have a comparatively low acceptance cost for merchants. Whereas Mastercard charges a 1.5% and 1.55% interchange fee on debit and credit cards, Mir cards only charge a 0.8% fee on debit cards and 1.3% fee on credit cards (Global Data 2019). Furthermore, federal legislation in July 2018 required all public sector employees to switch to Mir cards by July 2018 in order to receive their welfare



benefits (Interfax 2017). Next year, pension payments as well as child and unemployment benefits will only be paid on the cards (Voronova and Tetrault-Farber 2019).

After its overall successful adoption of Mir card domestically, which more than twenty percent of Russia's bank card users have implemented, Russia expanded this national financial card system abroad. The head of the (NSPK), Vladimir Komlev, told Reuters that "In the next three years, we want Mir cards to be operational in countries where Russians are used to traveling" (The Moscow Times 2019). This expansion has already been successful in some countries. According to Rosstat, Russians made 5.7 million trips to Turkey in 2018. Turkey's Isbank began accepting Mir cards in April 2019 (Voronova and Tetrault-Farber 2019).

China has similarly been accepting Mir cards at an increasing number of banks (Zheng 2017). In 2016, Chinese online retailer AliExpress announced they would accept Mir cards as payment (The Moscow Times 2016). In 2017, UnionPay International and the NSPK jointly issued a UnionPay-Mir debit card which allows Mir cards to be used in the UnionPay network, which covers more than 160 countries outside of Russia (Union Pay International 2017). Mir cards are present even in de-facto territories such as South Ossetia (Alania Inform 2018).

## AVOIDING SANCTIONS

Russia has been promoting the Mir card system to a large degree because of international sanctions, such as in response to Russia's 2014 annexation of Crimea and its interference in the 2016 presidential election, potentially affecting Russian banks doing business with US-based Mastercard and Visa (The Moscow Times 2016).

While the effectiveness of Western sanctions is disputed by many, scholars and practitioners argue that the most damaging impact of sanctions on Russia is its unpredictability (Russell 2018, Connolly 2018, Wonder 2018, Kluge 2019). American and European sanctions began in 2014 on a diplomatic basis, first suspending ongoing talks between the EU and Russia regarding visa liberalization and a new EU-Russian partnership agreement. In a later stage, specific people and entities related to Russian actions in Ukraine were further sanctioned by both America and the EU. In the last and current stage of sanctions, sectoral economic sanctions were levied against Russia (Kluge 2019).

However, this pattern of sanctions changed when President Donald Trump came to power. Rather than working jointly with Europe, US sanctions against Russia became focused on domestic considerations. As a complicating factor, EU member states have their own interests, particularly relating to Nord Stream 2 (Kluge 2019). EU/European sanctions on Russia also differ from American sanctions on Russia with regards to Russian oil and gas. The EU is dependent on Russian gas and therefore focuses energy sanctions on oil, for example, while allowing previously existing activities to continue. In contrast, American sanctions apply to both the oil and gas sectors with no exceptions (Russell 2018, 4). Because of the wide variety and evolving nature of these sanctions, Russia has been forced to similarly change and adapt its approach over time.



This evolving response has been part of the reason why its tactics have been effective. The Russian government's strategy aims to reduce the impact of sanctions and protects its domestic economy from any potential future threats. The strategy has three complementary components: a) securitization of its economic policy, b) support of import substitution of strategic sectors and c) cultivation of closer economic relations with non-Western countries (Connolly 2018, 4). This strategy involved most importantly the creation of the Mir card system, which further reinforced the domestic banking system in opposition to Western banking systems (Russell 2018, 11). One example of this strategy was the removal of weak banks by the Russian state, which gave the state more power over the domestic banking system and strengthened the profile of the Mir Card System. Promsvyazbank, for example, assisted sanctioned firms and removed toxic assets off of Russian banks' balance sheets in order to support their international actions. Moreover, Russia introduced a floating ruble exchange rate in November 2014 (Kluge 2019). Both of these strategic moves supported import substitution of its strategic sectors and securitization fits economic policy. This domestic strategy and the creation of multilateral financial organizations with non-Western countries such as the Eurasian Economic Union has been effective in creating alternative financial options that avoid Western sanctions. Moreover, Russia has reduced its reliance on weapons manufacturing imports – making it independent from specific sector-based sanctions (Kluge 2019).

Russia has been able to protect key sectors of its economy from sanctions through considerable influence it had already built therein. However, the Russian government faced a challenge. Prior to the sanctions regime, the Russian financial system was in the process of integrating with the global financial system, particularly as a recipient of finance and aid. In order to combat this, the Russian state engaged in 'Russification' – using domestic and state-controlled sources of capital to fill the gap of finance that many domestic firms faced in the wake of sanctions (Connolly 2018, 9). This has led many to claim that the sanctions are having little to no effect on the Russian economy.

Regardless of these claims that sanctions are having no impact, Russian officials have still called them "insane" and "reckless" as well as "tantamount to racketeering" (Ellyatt 2019). This kind of language suggests that sanctions are indeed having at least some kind of impact, because if they were not, it would not make sense for Russian officials to be so outwardly aggressive against them on the world stage. Indeed, Russian banks were forced to pay back around \$60 billion USD of loans in the year starting in June 2014 (Russell 2018, 9).

Domestically, these loan repayments amongst the other rhetoric surrounding sanctions are framed as a US strategy to regain control to a unipolar world order when Russia is resurging (Kluge 2019). This fits neatly into Russian rhetoric and approach to build a multipolar world order. Further, whether or not sanctions are effective does not dispute the fact that the Mir Card System was created in response to these very sanctions. In this case, the origins of the Mir Card System do match up with its effectiveness as outwardly, the Russian state does not appear to be suffering from sanctions.

## ABANDONING THE DOLLAR-DOMINATED SYSTEM

Another reason for the adoption of this payment system, according to Dmitry Medvedev, Prime Minister of Russia, is an attempt to move from the dollar-dominated financial system that exists today because: “no one currency should dominate the market, because this makes all of us dependent on the economic situation in the country that issues this reserve currency, even when we are talking about a strong economy such as the United States” (Devonshire-Ellis 2018).

This rationale harkens back to the term ‘multipolarity’. Within Russian foreign policy, multipolarity not only characterizes Russia as a strong state and relevant of international standing, but also is a concrete goal that Russia seeks to achieve “by reconstructing its global and regional role in the post-Cold War architecture” (Saltzman 2012, 561). This overarching goal is similar to other Russian soft power tactics as evidenced in Russia’s creation of multilateral institutions to balance out power distribution on the world stage such as the Commonwealth of Independent States (CIS) and the Eurasian Economic Union (EAEU). In short, the aim has always been to maintain regional power, stability, and to prevent outside influence from invading post-Soviet states (Slobodchikoff and Davis 2017, 28).

Evidence for this move away from a dollar-dominated system, called a ‘de-dollarization policy’ is also amongst recent Russian financial decisions. According to Russian Finance Minister Anton Siluanov, Russia is considering the yuan and euro as currencies for Eurobonds next year rather than the dollar (Russia Today, 19 October 2019). Moreover, Rosneft, Russia’s largest oil company has switched to the euro as its base currency for all export contracts, and Russia has been slowly decreasing the US currency share of its international reserves (Russia Today, 13 October 2019).

Russia’s de-dollarization policy is shared by other states, notably China. In 2016, Russia introduced Urals crude oil futures in rubles. Moreover, since July 2011, the Iranian Oil Bourse (i.e. the Iranian Petroleum Exchange) has been using the euro and the Iranian rial to settle oil deals rather than the dollar (Monan 2018). Both China and Russia see an increasingly multipolar and pluralistic world order as more beneficial for their interests. While their stances on what kind of global governance would be the most personally advantageous differ, they currently strategically cooperate to decrease the value of the dollar. For Russia, multipolarity means a lesser role for the United States, more bilateral trade and different centers of currency concentration and power.

Russia seeks a multipolar world where it can regain control over its neighborhood and status as a great power (Stronski and Ng 2018). While the Mir Card System is a small part of moving away from a dollar-dominated system, which includes the heavy usage of Visa and Mastercard, it is but one cog in a larger system. Soft power measures such as the creation of the Mir cards are effective because they do not create an entirely different system of values than the ones used by Mastercard and Visa. They merely operate as a counter system.


## RUSSIAN SOFT POWER AND THE MIR CARD SYSTEM

Looking back at Russian soft power as a whole, Slobodchikoff and Davis acknowledge that rather than forming its own cultural identity to gain attraction, Russian soft power works like a counter ideology that runs against the West (Slobodchikoff and Davis 2017, 28). The Russian national identity on which soft power is meant to be based is made up of both traditional Russian cultures, and of Russian geopolitical history – particularly that which ignores the collapse of the Soviet Union. In the aftermath of the Soviet Union's collapse and as NATO and the EU began to expand into former Soviet satellite states, Russia began to feel insulted and disrespected. In response, Russia attempted to develop a regional identity by forming multilateral organizations such as the Commonwealth of Independent States (CIS) and the Eurasian Economic Union (EAEU). These multilateral institutions existed to form more receptive audiences for the spread of Russian soft power. However, running parallel to this attempt of attraction towards former Soviet states, Russia also attempted to discredit Western values, by "show[ing] the hypocrisy or moral incongruity" in the West. Hence, rather than creating a separate system of values, it instead raised negative aspect of already existing Western ideals (Slobodchikoff and Davis 2017, 27). This same tactic is evident amongst the creation of the Mir Card System, as Russia has repeatedly stated its importance for avoiding Western sanctions and supporting their de-dollarization policy. These sanctions are characterized as harmful to Russian citizens and discredited as negative public diplomacy against them. The Mir Card System also aims to attract other countries such as China in order to further build mutually beneficial financial relationships. This relationship building as a part of soft power is not new, as evidenced by the creation of many other multilateral organizations such as the EAEU and the CIS.

What distinguishes the Mir card system is that it originated from a domestic need and fear of international sanctions. While many of the origins for the Mir Card System appear to match with their intended goals, it remains unclear if the system originated *specifically* as a soft power initiative to protect its domestic population and evolved slowly to also avoid Western sanctions and as a part of Russia's de-dollarization policy. Alternatively, the Mir Card System could be part of a larger strategy to achieve both of those objectives from the start. Regardless of the actual origin, it is clear is that the Mir cards are now an undeniable part of Russian society, due in no small part to Russian government initiatives.

## CONCLUSION

Over the past few years, the Mir card system has become more prominent both within Russian society and internationally. This comes as no surprise given the predominantly aggressive stance the Russian government has taken in supporting this measure. While there are a variety of reasons for the adoption of the Mir Card System, it is most importantly a soft power tactic that offers an alternative to Western-based financial Visa and Mastercard systems. Further, the Mir Card System originates from and achieves two specific and one broad Russian foreign policy objectives: a) avoid international sanctions, b) undermine the current dollar-dominated system, and c) build a multipolar system. While the system does not achieve any of these foreign policy outcomes alone, it operates as a cog within a larger framework.

This process is distinguished by two characteristics. First, it is a blatant act of subversion against American and European sanctions. Second, it is but one step in a larger strategy to build a more multipolar system where Russia holds a larger share of power. In short, the Mir Card System is meant to achieve foreign policy objectives by promoting a counter financial alternative as one arm of a larger and more holistic soft power approach that takes into account a multitude of financial, political and cultural tools. The ultimate realization of these goals, according to Tsygankov, is the restoration of “imperial control if not by tanks, then by banks” (Tsygankov 2006, 1080). Russia’s soft power strategy has and will continue to attract other countries by using any means at its disposal in order to restore itself to what it considers its rightful place as a great power on the world stage using, in this instance, the Mir Card System. 

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# SUSTAINING POWER THROUGH EXTERNAL THREATS: THE POWER OF ENEMY IMAGES IN RUSSIA AND AZERBAIJAN

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**Abstract:** *Despite the growing body of research on authoritarian regimes, few studies address the issues of their legitimization through exaggerating external threats and constructing enemy images. Targeting the gap in the literature, this article explores the discursive strategies of 'evilization' and demonization of the 'other', with a focus on their implications for legitimating and sustaining the authoritarian regimes in post-Soviet space. Examining the cases of Russia and Azerbaijan, the qualitative, comparative analysis presented in this article uncovers a series of essential similarities between the regimes' legitimization strategies. Findings suggest that there has been a strong tendency in both Russian and Azerbaijani discourses to 'externalize' major problems facing the countries and scapegoat 'evil forces' as their main causes. Frequent appeals to the external threats have been accompanied by a heightened emphasis on the necessity of strong presidential power, with 'strongmen' that are capable of withstanding the enemies' conspiracies. Remarkably, one of the core similarities between the two regimes is their unstoppable drive towards monarchical presidencies.*

**Keywords:** *Russia; Azerbaijan; Authoritarian Regimes; Enemy Images; Legitimation*

## INTRODUCTION

Even though the survival strategies of the authoritarian and hybrid regimes in post-Soviet countries have been extensively studied, there has been little attention to the legitimization of rulers through the construction of the enemy images and external threats. This study represents an attempt to fill the void, by examining the cases of Russia and Azerbaijan

during Vladimir Putin's (2012-present) and Ilham Aliyev's (2003-present) presidencies, respectively. The two cases were selected to ensure variance along relevant dimensions of analysis, in order to examine the differences between post-Soviet authoritarian regimes when it comes to legitimation strategies through the enemy images and external threats. We have selected two post-communist countries, the transition of which has been marred by a series of authoritarian malpractices, ranging from centralization and personalization of power to extensive crackdown on civil liberties and political freedoms (Freedom House 2019a). One of the core similarities between the two regimes is their unstoppable drive towards monarchical presidencies with hyper-presidents – endowed with unlimited power.

The Arab Awakening, which deposed some of the world's longest-standing autocratic rulers, showed that the autocrats are becoming increasingly vulnerable to youth-driven, social media-powered societies. Thus, both Russian and Azerbaijani 'strongmen' are tasked with sustaining their regime stability, not least through the construction of external threats.

The article contributes to the bulk of literature on the legitimation strategies of the authoritarian regimes. It analyzes the representation of the enemy images in Russian and Azerbaijani presidents' discourses, with a focus on their functions in terms of legitimating and sustaining the authoritarian rule in the two countries. Based on these observations, this article seeks to address the question: how have dissimilar authoritarian regimes sought to engender domestic legitimacy through the construction of external threats and enemy images?

The study relies on critical discourse analysis to explore the core narratives that the Russian and Azerbaijani presidents have employed in the representation of the 'Other'. The study relies on observations from political speeches, newspaper articles, official documents and interviews which provide a body of discourse.

## UNDERSTANDING LEGITIMATION AND ENEMY IMAGES IN AUTHORITARIAN REGIMES

Legitimacy is frequently associated with regime survival, given that it functions as an alternative resource of support for incumbents in turbulent times (Mazepus *et al.* 2016, 352). Lipset (1959) defines legitimacy as the "the capacity of a political system to engender and maintain the belief that existing political institutions are the most appropriate and proper ones for the society" (p. 86). Authoritarian legitimacy has attracted a lot of academic attention and is largely viewed as something critical that non-democratic rulers seek to acquire or develop through their legitimation claims, symbols, and narratives (Dukalskis and Gerschewski 2017, 253). Huntington (1991) notes that Western democratic systems are less dependent on performance legitimacy than authoritarian systems, as failure is blamed on the incumbents instead of the system, and the ouster and replacement of the incumbents help to renew the system (p. 27). Moreover, the rulers in authoritarian regimes tend to rely heavily on external sources of legitimation, not least through appealing to enemy images and "accusing outside forces of causing every problem that arises on the domestic front" (Shakrai 2015, 33).

Middens note that “the threat of enemies justifies actions that might otherwise be unacceptable or illegal (...) Enemies serve as a focus for aggression and as a means of diverting attention from pressing internal problems” (Middens 1990). One of the most frequently observed functions of the enemy images is the potential to mobilize for or against an idea or a specific group. Indeed, the mobilizing power of the enemies and external threats would potentially have legitimizing and justifying effects on a government’s even most disputed and unpopular policies. The “rhetoric of insecurity” suggested by Cambell seems to accurately capture the basic functions of the enemy images. According to this rhetoric, the state policies are legitimized through the attempt to instill notions of insecurity (Campbell 1998).

To trigger the emotions of fear, the enemy must be portrayed as aggressive, dangerous, threatening, immoral and unreliable. In effect, enemy images and related stereotypes are often characterized by the claim that the enemy has aggressive and evil intentions and is led by a centralized and monolithic leadership that would be capable of carrying out intricate conspiracies (Hermann 2003, 289). The ‘evilization’ is inherently linked to one of the most frequently observed functions of the enemy images – mobilization of population against the ‘Other’ (Shakrai 2015, 34). This has much to do with the rally-around-the-flag effect that can generate long-lasting public support - conducive to sustaining authoritarian regimes.

To give an idea of the rally-around-the-flag effect, it is noteworthy that the escalation of conflict in Ukraine and the annexation of Crimea have been positively correlated with Putin’s growing popularity despite the crippling Western sanctions. This is where the legitimizing effects of the enemy image come into play, with Putin’s appeals to external threats helping boost his popularity amid severe economic downturns. A question arises as to what discursive strategies the Russian and Azerbaijani authoritarian rulers use to ‘evilize’ the enemies and laud the great job that they do standing up to it.

## THE REPRESENTATION OF THE ‘OTHER’ IN RUSSIAN POLITICAL DISCOURSE

There is a broad consensus among the students of Russian politics about the essential features of the Russian regime-centered around ‘putinism’. The latter is viewed as a form autocratic rule that is personalistic, conservative and populist (Fish 2017, 61). The fact that Russian president Vladimir Putin’s recent efforts at tailoring the Russian Constitution to his re-election have not run into public resistance, suggests that ‘putinism’ remains significantly popular with Russians. A question arises as to what specific factors are maintaining Putin’s popularity amid excessive crackdown on civil liberties and political freedoms across Russia (Freedom House, 2019a).

It has not been uncommon for Putin to legitimate his regime through exaggerating external threats, emanating particularly from the West. Moreover, the escalation of the crisis in Ukraine has been positively correlated with the ‘othering’ of the West in Kremlin’s

discourse. Some of the characteristics attributed to Western governments by Putin include hypocrisy, Russophobia, lack of moral integrity, recklessness, etc. (Szostek and Hutchings 2015, 185). Clearly, the relationship between Moscow and Washington has reached its nadir since the end of the Cold War, and by December 2014 the concept of an 'iron curtain', separating East and West was again put forward, at least in some analyst circles. Igor Ivanov, Putin's first foreign minister, even suggested that the crisis in Ukraine is more dangerous than the Cold War, as there still is no mutually acceptable mechanism to prevent military clashes (Black and Johns 2016, 227). Furthermore, Putin would regard the '*coup d'état*' in Ukraine as a manifestation of a deeper issue of the resurgence of 'nazism' and 'fascism' in Europe: "those who stood behind the latest events in Ukraine resorted to terror, murder and riots. Nationalists, neo-Nazis, Russophobes and anti-Semites executed this coup. They continue to set the tone in Ukraine to this day" (Kremlin 2014). The references to the revival of fascism would be followed by the claim that as a pivotal actor in defeating fascism through World War II, Russia had a crucial mission of preventing its resurgence in Europe.

Interestingly, some Russian analysts tend to claim that Cold War thinking never went away from Western perceptions of international relations, and even see that as part of the crisis outbreak in Ukraine (Black and Johns 2016). Consistent with such contentions, Putin has tended to accuse the USA of the devastation unleashed on Ukraine. In Putin's words, Washington's goal is to 'remake the whole world' around its own interests and thus to impose a 'unilateral diktat' on the rest of the world. Therefore, the crisis in Ukraine was framed an unsurprising consequence of the United States and NATO's hostile and anti-Russian policies. They "continue their policy of expanding NATO. What for?" (Washington post 2015).

While blaming the devastating crisis on the United States the Kremlin has tended to contend that fomenting instability in Ukraine is a part of policy that aims to drive a wedge between the two brotherly nations. Moreover, Putin has repeatedly stated that "Russians and Ukrainians are one people" (Trenin 2018). Thus, the Kremlin's discourse suggests that had not the United States of America and European Union made every effort to undermine the Russian-Ukrainian relations, there would have been no considerable frictions between the two brotherly nations. Putin has invariably accused the United States and European Union of their inherently anti-Russian policies, manifested particularly in their double standards on Crimea's 'self-determination'. "We keep hearing from the United States and Western Europe that Kosovo is some special case. What makes it so special in the eyes of our colleagues? (...) This is not even double standards; this is amazing, primitive, blunt cynicism" (Kremlin 2014). Along with activating the Cold War narratives and stereotypes associated with the United States and its policy towards Russia, it has not been uncommon for Putin to treat Washington as 'intellectually inferior' and 'reckless' that suffers from 'imperial adventurism' and lacks strategic foresight. This specifically applies to 'reckless' sanctions imposed on Russia that among others, undermined trust in the dollar as the world's universal currency. "It's a typical mistake of an empire" said Putin and concluded that with its countless strategic mistakes; the

USA is accelerating the end of its global dominance (Abc news 2018). Essentially, by pointing to the acute threats emanating from the USA, he would strive to trigger rally-around-the-flag effect across the Russian population and focus their attention on the necessity of defeating the 'dangerous' but 'reckless' rival.

Moreover, the pronounced emphasis on standing up to the West has served as a convenient pretext to suppress dissent and pluralism across the two country by labeling civic and opposition activists as "anti-Russian spies," or "foreign agents," "traitors," who are involved in the "Western conspiracies" (Yablokov 2018).

Beyond all these, Putin has tended to undermine the very idea of political opposition, by implicitly representing it as an anti-state force backed by anti-Russian forces. Namely, in response to a question about opposition leader Alexei Navalny, Putin stated that Russians "do not want second edition of today's Ukraine for Russia" (France24 2017). As noted earlier, the Russian President would frame the Maidan Revolution as a sign of 'fascism revival'. Such examples would help point to the hypothetical future of a strong opposition that would soon or late become a 'foreign agent' and cause instability. It turns out that considerable part of Russian population tends to share Putin's stances on opposition. Remarkably, a Levada-Centre survey on the necessity of political opposition shows that around 54 percent of respondents thought Russia needed one, while a quarter found it obsolete (Levada 2016). The reasons given by the second group come down to fears about internal divisions and instability that a strong opposition can cause (Levada 2016).

The escalation of conflict in Ukraine and the annexation of Crimea produced rally-around-the-flag effect, since Putin's approval rating increased to over 85 despite Western crippling economic sanctions (Terzyan 2020). Frequent appeals to the external threats have been accompanied by a heightened emphasis on the necessity of strong presidential power, with a 'strongman', who can withstand the enemy's conspiracies. This discourse has reached a point, where Putin's stay in office is perceived as essential for defending national borderlines. Not surprisingly, in March Russia's Constitutional Court approved amendments that could enable Putin to stay in power for another 16 years.

## THE IMAGE OF THE ENEMY IN AZERBAIJANI DISCOURSE

As a typical authoritarian state, Azerbaijan's political system is characterized by centralization of power and personalistic leadership, as well as weak opposition and massive crackdown on civil liberties and political freedoms (Freedom House, 2019b). Meanwhile, the existence of the external enemy helps President Ilham Aliyev further consolidate his power and justify his undemocratic practices. The long-standing Nagorno Karabakh conflict has been pivotal in targeting Armenia as Azerbaijan's clearly identifiable enemy in Azerbaijani political thinking and public consciousness. One of the most salient features of Azerbaijani President's discourse on Armenia, is the latter's demonization and 'evilization'. Some of the adjectives that Aliyev has used in describing the enemy image of Armenia are "barbarian,"

"vandal," "aggressor," and even a "fascist state": "Armenia is a fascist state. Their national ideology is fascism, discrimination and nationalism" (Azatutyun2014). An integral part of Armenia's 'evilization' has been its representation as bellicose, belligerent and destructive, which is liable for 'freezing' Nagorno Karabakh conflict resolution and causing instability. The "main threat to regional security is posed by the aggressive policy of Armenia against Azerbaijan" (Aliyev 2014).

Nevertheless, the enemy has been framed as 'weak' and 'inferior', that was able to 'occupy' "Azerbaijani lands as a result of foreign intervention" (Elibegova *et al.* 2018, 7). Moreover, the assertion that Armenia is supported by Russia tends to get invoked as a justification for not wiping "weak," "immoral," "fascist," enemy off the face of the earth (Elibegova *et al.* 2018). In order to mobilize the Azerbaijani society against the 'evil' enemy and thus legitimate his power, the Azerbaijani President has portrayed Armenia as a 'fake state' built on historical Azerbaijani lands. Such claims have called for unity and patriotism in order to overpower the 'occupant' enemy and restore 'historical justice': "Azerbaijanis will return to Nagorno Karabakh, to other occupied lands and to all the historical Azerbaijani lands" (Massispost 2014).

Consistent with authoritarian rulers' rhetoric, Aliyev has placed a heightened emphasis on military power, thus preparing ground for large-scale militarization. Aliyev's discourse suggests that Azerbaijan's military superiority will be critical to overpowering Armenia. "We will continue to build up our military capabilities. The weaponry and ammunition we have acquired in recent years suggest that we can accomplish any task" (Azernews 2014). Such a rhetoric is typical of personalistic regimes, in which the rules strive to build a 'strongman' image through exaggerating external threats and simultaneously emphasizing their personal characteristics that make them more likely to use military force against the dangerous enemy (Weeks 2012, 326). It is noteworthy, that conspiracy narratives have been strongly associated with the representation of the enemy image of Armenia. The Azerbaijani leadership has strived to create an image of an anti-Azerbaijani, evil and aggressive Armenian lobby, which allegedly conspires to damage or undermine the Azerbaijani statehood: "Our political weight and economic power are growing. (...) Still, there are ill-wishing forces who do not love us. They can be divided into several groups. First, our main enemies are the Armenians from all over the world and the hypocritical, corrupt and bribe-taker politicians who are under their influence" (President.az 2012). Furthermore, the 'externalization' of domestic problems and exaggeration of the enemy image in Aliyev's discourse reached a point, where he accused the Armenian lobby, the scope of whose influence he said 'is quite broad' of the continuing international criticism of Azerbaijan's abysmal human rights record: "An information war is waged against us (...) The Armenian lobby is especially active in that information war. Attempts to badmouth Azerbaijan, to deny Azerbaijan's realities, to present Azerbaijan to the outside world as a backward and undemocratic country primarily result from dirty deeds of the Armenian lobby" (Asbarez 2012).



It follows that the Armenian lobby is the reason why international watchdog groups, including Amnesty International and Human Rights Watch condemn severe human right violations in Azerbaijan. Clearly, the target audience of such statements is the Azerbaijani population, while the core message is that even if the enemy is 'weak' and 'inferior', the Armenian lobby still poses acute threats to Azerbaijan.

Even the 2018 'Velvet Revolution' that would be largely framed as a major democratic milestone in Armenia, left the Azerbaijani leadership's hard line stances on the enemy intact. Overall, the 'evilization' and demonization of the enemy is consistent with an authoritarian regime's efforts at mobilizing society and sustaining their power through external threats and the enemy image. The latter, as noted earlier, helps divert attention from domestic socio-economic and political problems and scapegoat the enemy for all troubles.

Furthermore, the necessity of standing up to the external enemy serves as a convenient pretext to suppress dissent and pluralism across the country by labeling opposition activists as 'spies', 'traitors' who are involved in the enemy's conspiracies (Terzyan 2016, 71-72). Frequent appeals to the external threats have been accompanied by a strong emphasis on the necessity of strong, presidential power, with a 'strongman', capable of withstanding enemy's 'conspiracies'.

Unsurprisingly, the referendum held in Azerbaijan in 2009 resulted in abolishing of presidential term limits. Freedom House reports point to widespread suppression of pluralism and a strong tendency of curbing the freedom of speech and controlling the media narrative on politically sensitive issues across the country (Freedom House 2019b). Namely, the legal amendments passed in 2017 tightened government's grip on online media, allowing blocking of websites without a court order if deemed to contain content posing a danger to the state or society (Freedom House 2019b).

Overall, Azerbaijan has been evolving into a 'petro-state' (countries immensely reliant on oil revenues), which often maintain domestic stability by using petrodollars to fund social programs and a strong state security apparatus (Demkiv 2012). Some observers note that petroleum has already made the incumbent authorities rich and powerful enough to address any challenge to their hold on power (Guliyev 2009). Studies show that oil and gas account for about 75% of state revenue and around 35% of the gross domestic product (GDP) (Reuters 2019). Oil revenues have become a crucial factor in sustaining Aliyev's regime-based on a system that distributes rents from oil exports through a patronage network in order to ensure unwavering support of allies and major clientelist groups (Guliyev 2009).

Nevertheless, oil-addicted Azerbaijan is highly vulnerable to the fluctuations of international oil prices and tends to find itself in complete economic disarray as the oil prices drop. Unsurprisingly, the Azerbaijani economy got damaged severely in the face of tumbling oil prices in 2016, when prices fell below \$30 a barrel. This sparked huge economic discontent with rising food prices and deteriorating economic conditions in Azerbaijan as a result of oil price spikes. Along with violently crushing the protests, the Azerbaijani authorities would pull out the 'enemy card' to distract attention from pressing internal problems (BBC 2016).



The situation came to a head in April, 2016, resulting in the outbreak of heavy fighting between Azerbaijani and Armenian and Armenian armed forces, now known as the 'April War' or 'Four-Day War', in which at least 200 died (Jardine 2018). The 'April war' was well predicted by a well-informed observer, suggesting that the persisting turmoil might well prompt the authorities to 'play the Karabakh card' by starting either large or small operation as a recipe for downplaying the economic hardships and rallying Azerbaijanis around the flag (De Waal 2016). This is where the appeals to external threats and enemy images come into play to produce rally-around-the-flag effects, thus shielding the authorities from mounting public outrage caused by economic downturns.

## CONCLUSION

This article contributes to existing literature on the representation and functions of enemy images in authoritarian regimes by examining the cases of Russia and Azerbaijan. Based on the previous discussion, there are several concluding observations to make regarding the 'othering' and regime legitimization strategies in Russian and Azerbaijani political discourses.

Both in Russian and Azerbaijani discourses there have been a propensity to accuse the enemies of causing major problems facing the countries. The escalation of the crisis in Ukraine has been positively correlated with the 'othering' of the West in Kremlin's discourse. Putin's discourse has been characterized by a strong tendency to blame the outbreak of the Russian-Ukrainian conflict on the West and primarily on the United States – repeatedly accused of anti-Russian policies, aimed to 'remake the whole world' around its own interests.

Similarly, Azerbaijan's clearly identifiable enemy Armenia has been framed as destructive, belligerent and bellicose, that causes instability and devastation, by 'freezing' the Nagorno Karabakh conflict resolution.

The 'Others' have been 'evilized' and demonized in both Russian and Azerbaijani discourses. Some of the characteristics attributed to Western governments by Putin include hypocrisy, Russophobia, lack of moral integrity and recklessness. Moreover, the Kremlin has framed the Ukrainian crisis as a struggle against 'fascism', as those who staged the Maidan Revolution were labeled as nationalists, neo-Nazis, Russophobes and anti-Semites.


The references to the 'revival of fascism' would be followed by the claim, that Russia had a crucial mission of preventing its resurgence in Europe.

As for the 'evilization' of Azerbaijan's enemy, it is noteworthy that some of the adjectives that Aliyev has used in describing the enemy image of Armenia are 'barbarian', 'vandal', 'occupant' and 'aggressor', and even a 'fascist state'. The 'evilization' and demonization of the enemy has rhetorically necessitated the use military force against 'the evil'. In order to mobilize the Azerbaijani society against the 'evil' enemy and legitimate his power, the Azerbaijani President has portrayed Armenia as a 'fake state' built on historical Azerbaijani lands.

Such claims have called for unity and patriotism in order to overpower the 'occupant' enemy and restore 'historical justice'. Both Russian and Azerbaijani leaderships have consistently strived to trigger rally-around-the-flag effect through the construction of the external threats and the enemy images. Remarkably, the escalation of conflict in Ukraine and the annexation of Crimea have been positively correlated with Putin's growing popularity despite the crippling Western sanctions.

As a typical petro-state Azerbaijan is highly vulnerable to the fluctuations of international oil prices and tends to find itself in complete economic disarray as the oil prices drop. This is where the appeals to external threats and enemy images come into play thus shielding the authorities from public outrage caused by economic downturn.

The necessity of standing up to the enemy has served as a convenient pretext to suppress dissent and pluralism across the two countries by labeling opposition activists as 'spies', 'foreign agents', 'traitors' who are involved in the enemies' conspiracies. Such rhetoric is not uncommon in authoritarian regimes, where leaders tend to strengthen their popularity by exaggerating external threats and exploiting nationalism.

Frequent appeals to the external threats have been accompanied by a heightened emphasis on the necessity of strong presidential power, with 'strongmen', who are capable of withstanding the enemies' conspiracies. Not surprisingly, one of the core similarities between the two regimes is their unstoppable drive towards monarchical presidencies. Further research is essential to account for Russian and Azerbaijani incumbents' evolving strategies of sustaining power through external threats and enemy images. 

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# THE GENDER-BASED VIOLENCE AS AN INSTRUMENT OF WARFARE IN ARMED CONFLICTS

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**Abstract:** *The gender-based violence in recent times has become an integral part of the on-going Boko Haram Insurgency in North-East Nigeria. Since the full-scale declaration of combat between the Nigerian state and the insurgent group, the asymmetrical tactics of the group have been evolving, based on its capabilities. The recent spike in the targeted raid and attack on female schools, markets, and female institutions purposely for abduction and kidnapping of women and girls indicated this assertion. Due to the depletion of its fighters and loss of territories, there is a surge in mass deployment of 'women and young girls' as material instruments of warfare: fighters, suicide bombers, human shields, bargaining tools, sex slaves, informants, and so on. This article appraises the gender push-pull factors responsible, motivation behind the current behavior, and proffers some policy guidance.*

**Keywords:** *Gender-Based Violence; Boko Haram; Women; Girls Abduction; Armed Conflict; Human Shield; Sexual Abuse; Suicide Bombers*

## INTRODUCTION

Since 2009, Boko Haram has brought to a halt all sense of normal life in the north-east of Nigeria. The group has run a campaign of killing, maiming and very recently abduction of girls and women. Social structures and institutions such as hospitals, schools, churches, mosques, markets, historical heritages, and public services and infrastructure have been destroyed. The civilian population has been deliberately targeted and subjected to unimaginable psychological and physical torture, including denied access to life saving

services. A recent report of Amnesty International (2015a) documented evidence of war crime and crime against humanity against the group Boko Haram's name is a local moniker derived from the group's abhorrence of Western education. Its former leader, Mohammed Yusuf believed that western education corrupts the idea of the supremacy of Allah. The sect's full name is Jama'atu Ahlis Sunna Lidda'awati wal-Jihad ('People Committed to the Propagation of the Prophet's Teachings and Jihad') founded in 2002. Boko Haram is an indigenous uprising, with a radical Islamist religious ideology. Its aim is an Islamic state governed by Sharia law in Nigeria. The group is predominantly operating in the North East of Nigeria; especially, Adamawa, Borno and Yobe states; however, it is also active in Northern Cameroon, Niger and Chad. Following the rise in the group's radicalization and violent uprising, leading to the extra-judicial execution of its leader (Mohammed Yusuf) and some 800 members in July 2009, the group became fully militarized and set on revenge path; targeting the Police, military formations, and other formal structures of government.

The group's fighters are estimated to be between 9,000 and 15,000 (Leach 2006). In March 2015, the group declared its allegiance to the Islamic State of Iraq and Syria (ISIS), putting to bed speculations of links to AL-Qaeda. Boko Haram has killed more than 17, 000 and ranked second to ISIS globally in deadliness (UNDP 2017; Amnesty International 2015b), including more than 1,500 in first quarter of 2015, in attacks occurring mainly in northeast Nigeria. Upwards of 1.5 million people have been displaced in the violence - There had been 46 bomb attacks between January 2014 and March 2015, killing at least 817 people (The Guardian 2015). The group formally gained international attention in 2011 when it bombed the United Nation's building in the country's capital, Abuja, killing 23 and injuring more than 75 staff members. On 13<sup>th</sup> November 2013, Boko Haram was formally designated a 'Foreign Terrorist Organisation' by the United States Department of State and a ransom of \$7 million placed on its leader (Reinert and Garcon 2014). The Nigerian government officially declared a state of emergency in the three affected states in May 2013 and launched a full-scale military operation against the group in 2013; a campaign which is still ongoing.

Women and girls represent the largest population of victims since the commencement of the insurgency. Amnesty International (2015) estimated that between 2014 and early 2015, the group had killed 5,500 civilians, the majority of whom were women and children. Similarly, it estimated that Boko Haram had abducted more than 2,000 girls and women. Recently, the Nigerian military had recorded some successes against the group, prompting a change in the group's tactics (Siollun 2015). The military campaign inflicted losses on its male fighters' population and the territory it controlled has diminished, and thus gender has become pivotal in its emerging strategy, as evidenced by the rise of kidnapping of young girls and women, and the use of girls (ages 9 and 13) as suicide bombers (Woods 2015). These tactics has affirmed the assumption that, the group is fighting its last battle; therefore, using all its disposable instruments. Therefore, this article's objective is to takes a cursory look at the motives for the new tactics of operations by Boko Haram – its apparent hunt for girls and women. The new trend of using women as bait, financial operators,



intelligence gathering and informant, sex toys, human shield, fighters, suicide bombers, transporters, new unsuspecting inductees, and so on; is alarming. The article significantly helps bring to fore the gender-based component of the conflict, which has been under-researched. It concludes that, the group's new gender-oriented tactics is motivated by some factors, and strategic policy response is required to address it.

## THE CONCEPT OF GENDER-BASED VIOLENCE (GBV)

In view of the patriarchal nature of early societies, GBV are often perpetuated by men against women. Therefore, GBV is used interchangeable as Violence against Women (VAW). The 1993 UN Declaration on the Elimination of Violence against Women (VAW) offered the first official definition of the term Gender-Based Violence: "As any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life" (Population Reference Bureau 2001). European Institute for Gender Equality (EIGE) defines violence against women as "all acts of masculinity that promotes or is likely to result in harm or suffering to women, including threats of such acts" (EIGE n.d.).

The World Health Organization (WHO) (WHO, cited in EIGE) estimates that at least one in every five of the world's female population has been physically or sexually abused at some time. Gender based violence can be categorized into three broad dimensions: violence against women perpetuated at home/domestic, at community/society level and by the state (Jekayinfa 2003).

1. Domestic violence against women constitutes a major component of GBV and is mostly perpetuated by men. This involves physical, sexual, psychological abuse of women by male partners and non-partners. According to a 2013 global review of available data, 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence; while 70 per cent have experienced physical and/or sexual violence in their lifetime from an intimate partner (UN Women 2013).
2. Violence against women is as endemic at the general community level as in families, since it is an extension of the family. Since the community is structurally skewed towards male-dominance based on gender roles, women are subjected to decisions or acts they have no influence or contribution over, especially in developing countries, such as; Female Genital Mutilation (FGM), forced/coerced birth control and abortion, and child marriages. More than 133 million girls and women have experienced some form of FGM in the 29 countries in Africa and the Middle East where the harmful practice is most common (UN Women 2013). This is violence perpetuated by community practices.
3. Violence against women inspired by the state usually reflects the ways and manners the institutions of state operates, especially, by promoting cultural, social and legal

practices that create unequal platforms/opportunities or freedom for both men and women. Religious and traditional fundamentalists have used this medium to exclude women's rights to economic autonomy and choices, and consequently various forms of abuse.

## GENDER-BASED VIOLENCE IN NIGERIA

In Nigeria, GBV differs in regional prevalence, besides the new Boko Haram interest in women. Violence against women in Nigeria has similar dimension and forms just as in most developing countries. Available scanty data shows religion and ethnicity, as the main drivers of physical and sexual abuse affecting as many as 35.1% of Igbo women (South-East Nigeria) and 34.3% of Hausa-Fulani women (Northern Nigeria) (Oladepo and Arulogun 2011). FGM, forced/child marriage and widowhood practices, hair-shaving and restriction to the homes are rights issues/abuses that remain a socially subjective discuss in Nigeria. Also, some sections of the Nigerian laws aid and abate GBV, especially, the right to assault of a wife in Section 55 of the penal code: secondly, in Section 6 of the criminal code, lack of legal recognition for partner or non-partner rape technically leaves women constantly vulnerable (Ifemeje 2012). The essence of an appraisal of GBV in this section is to provide an overview on the existing social state of violence against women and consequently how Boko Haram had capitalized on it to build a new conflict strategy in the on-going insurgency in Nigeria. It is argued that, women and girl are now officially a weapon of warfare, and an increasingly significant component of Boko Haram's tactics.

## THEORETICAL ARGUMENT: STRUCTURAL FUNCTIONALISM

It is adopted to explain gender relations and conflicts. The author Pope postulated that society exists for reasons and the reasons are positive; so, all must be done by all to preserve that purpose for the benefit of the society (Pope and Parsons 1975). The theory argues that societies are maintained or stabilized by harmonious relationship between individuals for the good of all members, with exception to sudden undesirable change. Changes that are good are considered positive in order to maintain the society, while bad change or demands are resisted so as to prevent disorientation or disarticulation of the existing societal order. The theory explains how individuals, groups and societies in general perceive the role of gender and its bias for preservation of status quo. That since the society is socially constructed to operate in certain ways/social functions; this should be adhered to without change (Kingsbury and Scanzoni 1993). It argues that, since a social pattern of behavior is already created for a society to operate (like bureaucracy); it is efficient to stick it. In gender relation, it is typically argued until recently, that the traditional gender roles in families should be sustained - man provides for the family, while the woman manages the home (care for kids and home chores); therefore, influencing the power relationship in favor

of the man. This is essentially visible because in the traditional African societies, money and wealth defines power and in turns engender success. Cultural or social revolution is not permissible within this framework, resulting in coercion of women into submission for survival.

Structural functionalism argues that, since this is the method societies had operated, it is the best way to organize it. Boko Haram is an extrapolation from a society which perceives the role of women in the above context. Therefore, western education in itself is a sin and offensive enough to their own doctrine of Islam, much less so education of girl children; as the case in North-East Nigeria. The subjugation in gender roles created by the existing order/status quo provided the platform for women to be objectified and used to prosecute armed conflict by Boko Haram.

### WOMEN AS A TOOL IN BOKO HARAM OPERATIONS

The concept of gender-based violence, especially against women is taking a proportional dimension following the rise in Boko Haram conflict. Since the commencement of full-scale armed conflict against the Nigerian state, Boko Haram had constantly evolved its strategies of operations. Hitherto, the strategies that it had used were mainly attacks on public infrastructures such as communication facilities, electricity distribution sources, government buildings, schools, police stations, hospitals, or markets; as well as coordinated attack on security forces at strategic locations within formations or military check points and barracks or bases; targeted assassinations of political and religious individuals who do not share their ideological views; and kidnappings or abduction for ransom.

The group introduced a new dimension into its mode of operation (Watt 2015). That is, the deliberate hunt for women and girls, most famously being the abduction of the Chibok Girls from the small town of Chibok in Borno State. This act has elicited reactions globally. On the 14<sup>th</sup> April 2014, the group invaded a Government Secondary School in Chibok, Borno State, camouflaged in military uniform, and abducted 276 girls, aged between 11 and 18, out of which 57 escaped (Watt 2015). Less than two month later, in the midst of calls and clamors both locally and internationally for the release of the girls, the insurgents abducted 63 more women from Kummabza in Borno State (Haruna 2014).

Since then, more abduction of women has taken place; as many as 2,000 according to Amnesty International. Therefore, the paper argues that the insurgent group may have changed its tactics to include female hostage taking due to a variety of reasons or factors:

#### *Bargaining Power*

In the two videos released immediately after the school-girls' abductions by the group in June and July 2014, they expressed their willingness to release the girls in exchange for its commanders, men and members of their families in custody of the Nigerian security agencies. Although the Nigerian Government initially has said it won't succumb to the

demands of the insurgents, however, due to pressure from citizens and the international community through the '#BringBackOurGirls' campaign, the Nigerian government worked behind the scene with both local and international negotiators to consider the offer (Olorunyomi 2014). Chadian authorities moved to mediate; the offer was later regarded as a decoy following the overrunning of the military barracks in Maiduguri. It resulted in a trust-conflict between the Chadian and Nigerian government (Ewekor 2014).

The use of women as weapon of bargain is not a new concept adopted by insurgent groups or rogue states. However, since the end of WW11, the use of women as tools or weapon of warfare in the XXI century, through the various Geneva conventions and international treaties have been prohibited. Owing to the success of Nigerian and multilateral military offences and its depleting number, the group is running low on fighters. Therefore, in order to address the dwindling fortune of their frontline commanders, they resorted to the abduction of women; even little girls who are still considered children.

The sensitivity of society towards this issue had enhanced pressure on the government to negotiate with the group, thereby putting Boko Haram on a better negotiating standpoint. Prominent world leaders have lent voices to the release of these girls and for Nigerian government to do more; including David Cameron, Barack and Michelle Obama, Ban Ki Moon, and very recently Malala Yousafzai. Since the abduction of the Chibok girls, there had been tumultuous criticism from Nigerians and the international community on the snail-paced response of the government of Nigeria; which further increases the bargaining ability of the group.

### *Human Shield*

The 'Human shield' is a military and political term describing the deliberate placement of non-combatants in or around combat targets to deter the enemy from attacking (Geneva Convention). This technique is illegal by the four Geneva Conventions (e.g. rule 97), however, rebel groups have used the strategies; a recent example was the Tamil Tiger group (LTTE) in Sri Lanka and Maute fighters in the Philippines. The human shield tactics of the sect is designed to literally keep women and girls in and around them as covers against attack from the security forces. This strategy had proved successful for the group, as the Nigerian Air Force and drones finds it difficult to attack their camps, especially in Sambisa Forest; in order to avoid innocent deaths of women and girls being used as human shield. There are fears that the insurgents could be provoked to kill the girls should the military try to free them using force. Because of the shield these girls provide to Boko Haram fortress of Sambisa Forest, so much caution and restraint had prevented the military from advancing their offences against the group into the forest, until very recently.

### *Indoctrination as Fighters and Unsuspecting Suicide Bombers*

The sequence of involvement of women in coordinated attacks had provided impetus to suspicion that women are being used as fighters, suicide bombers, logistic coordinators, etc. For example: In August 2013, among some Boko Haram suspects arrested was a 35-year old woman (Marama 2013). In June 2013, two women wearing veil were apprehended with an AK-47, a pistol and improvised explosive devices (IEDs) (Vanguard News 2013). Shortly after, another set of women, concealing rifles under their garments were among five arrested Boko Haram suspects (The Guardian 2013). This is similar to the Al-Qaeda's tactics, of using women to smuggle weapons and carry out suicide attack in Iraq. This was convenient because women are less likely suspects as suicide bombers and possesses the ability to starch ammunitions under their garments without suspicion at security check points (Sjoberg and Gentry 2001); especially in a conservative society. These strategies have been used in Pakistan, Israel, Indonesia, UK and importantly the liberation campaign in Algeria (Zenn and Pearson 2014).

Recent suicide bombing events, especially in Maiduguri and Damaturu, involving trained female Boko Haram members (as young as girls aged 10-14 years old) and some arrests are shooting down the widespread notion that the insurgency is strictly an all-male affair (masculinity engrained). This is a testament to the assumptions in quotas that women have become a new veritable weapon of war used by the group; however, testimonies from rescued women show they are being forced against their will like the 'black diamond' in Liberia. Women and girls are trained to fully accept Boko Haram's ideology and principles; adding to their unsuspecting attack capabilities. This was evidence in one of the videos released following the Chibok Girls abduction, showing the girls reciting verses in the Koran and dressed in Niqab (veil worn by Muslim women). Even though majority of these girls were Christians, they are now forced to accept Islam against their faith.

Similarly, in July 2014, the Nigerian Army announced that two women collaborators were caught by the Military. One of them was accused of coordinating payments on behalf of Boko Haram's operatives (Channels Television 2014). Reports also indicated details of three female Boko Haram members, who were secretly recruiting women into the female wing of the terrorist cell. They were caught on their way to Madagali town from where they were to transit to the forest to reunite with their cohorts. Shortly after, a woman, laced with explosive devices concealed inside her Hijab killed herself and a soldier close to the quarter-guard of the 301 Battalion of the Nigerian Army in Gombe (Channels Television 2014).

Between 2014 and 2015, the intensity of women being used solely as suicide bombers had sky-rocketed, compare to before 2014. This further supports this paper's argument about the new wave in girls and women as the Boko Haram group's operational tool. The terrorist group is reported to have deployed over 50 female suicide bombers to Maiduguri, Borno state, targeting to kill 100,000 people (Magdaleno 2014). In a study on the relationship between gender and violent behavior, Afghan scholar Amy Caiazza observed that "societies

that condone and even promote violence against women have shown over and over again that they (women) tend to be violent in other ways as well" (Idris 2014).

### *Domestic Activities*

By the teaching of Boko Haram sect, a woman's life revolves only around domestic chores and childcare. They are not to be seen in public carrying out any activity which is not given to them by Allah. They are not meant to receive any kind of education that will expose them to any activity outside their husband's home. Therefore, they should not consider any training, especially western kind of education; rather, limit their knowledge to Islamic religion and Arabic education. This is similar to Uganda Lords' Resistant Army (LRA), where female abductees are forced to cook, carry supplies and act as servants to the camp commanders (Annan *et al.* 2008). Boko Haram has shown the need for these women as domestic workers to take care of their environment, especially in the area of cooking.

### *Sexual Satisfaction/Abuse*

Accounts from majority of women rescued from the group's enclave shows they are constantly assaulted and became nothing but sex slaves; raped daily. Following recent successes by the Nigerian military, by April 2015, more than 534 women have been rescued from the group; out of which 214 of them are pregnant already (Joshi 2015). Asabe Aliyu, one of them said "they turned me into a sex machine; they took turns to sleep with me. Now, I am pregnant, and I cannot identify the father" (Joshi 2015); corroborating the group's leader proclamation "we would marry them out at the age of 9, at the age of 12" (Daily Times 2015). This new behavior (abduction of women) is therefore linked to the need for sexual satisfaction. This behavior corroborates emphasis that sexual desire forms a core parameter in the women and girls' abductions adventure of the group. They abducted women and girls during raids on towns and villages and are forced to marry Boko Haram members. Sexual abuse or GBV is also used as weapon of warfare against perceived enemy-communities (communities cooperating with Nigerian state); in addition to masculinity poking on males of the communities. "What I think is going on is that they are using women and women's bodies as weapons of war and weapons of oppression and that business model is not only with Boko Haram, it's also with ISIS. They see it as a means of advancing their cause and getting the attention of the world" Dr. Babatunde Oshotimehin acknowledged (Joshi 2015 Op. cit.).

These aspects of women exploitation were once a familiar reminder of rebel movement's behavior in fragile and conflict zones of Sub-Saharan Africa. For example, civil conflicts in Mozambique, Sierra Leone and Rwanda have all witnessed various forms of gender violence, including sexual abuse and forced marriage and conscription of enemy women into insurgent groups (Turshen 2001). Similarly, in Uganda, soldiers with Joseph Kony's Lord's Resistance Army (LRA) were routinely engaged in the sale and 'transfer' of

women (Amnesty International 1997). The risks are unimaginable, ranging from: psychological trauma, unwanted pregnancy, Sexually Transmitted Diseases (STDs), HIV-AIDS, Vesicovaginal Fistula (VVF), and so on.

## THE ROLE OF MASCULINITY

The masculinity component in the conflict had been very limited or at best unreported. Boko Haram portrays the notion that combats are for the male, while women are expected to be home-makers and serve their warrior-husbands. The Hegemonic masculinity forms strong fabric of Boko Haram ideology, due to cultural patriarchy in Nigerian society; evidence in legitimacy of male dominance in economic, social and political order. However, an iota of masculinity evidence in the group is demonstrated by the celebrations after each success over the Nigerian military; especially when the barracks/camps are overrun, and heavy artilleries captured. These armaments (e.g. armored tanks) are displaced and driven recklessly to display the masculine alpha-male ego of victory. They climb on the tanks and yell while shooting sporadically; a display similar to male domination euphoria in some cultures. On the part of the Nigerian military, female soldiers are equally not deployed in combat positions; a stand that also portrays the notion that, it is an all-male affair.



## CONCLUSION

Since 2012, abductions of women and girls have become an official Boko Haram tactic, however, reached an unprecedented level between 2014 and 2015. Apparently, the advances or successful dislodgment of the group from some territories by the security forces is causing Boko Haram to evolve tactically, thereby forcefully enlisting women. While voluntary enlistment of female fighters is plausible as seen in Liberia (the black diamond) and others, there had not been substantial evidence linking the group and voluntary association by women.


In 2014, the four countries of Niger, Cameroon, Chad and Nigeria established a coalition of military offence against the group. The successes recorded had led to loss of territories initially occupied by the group, including its caliphate headquarters – Gwoza. Moreover, the safe haven (Sambisa Forest) has been raided, even though the crimes are still continuing. It is believed that, with the transition of power to a newly elected president Muhammadu Buhari in May 2015, who had promised to end the conflict and bring back the Chibok Girls; more positive results are anticipated. If this trend becomes normal without strong reaction from the global community and the state, it could send positive signal to insurgent group across conflict zones, where women and girls have increasingly become tools for armed conflict prosecution and sustenance. This new phenomenon must be discouraged in all its ramifications. While the search for a military solution is under-way against Boko Haram, economic intervention plan must be developed to address the initial assumptions (abject poverty, neglect, social and political exclusion) surrounding the rise of dissidents in the North-East Nigeria.

In addition, an economic recovery strategy is necessary to cushion the devastation of the zone following long years of destructions. Finally, a rehabilitation framework is pertinent to reset the morals, psychology, acceptable religious ideology and social structure that sustain reintegration of the displaced population. The international development organizations, Nigerian government and donor agencies must invest in the peace-building and post-conflict infrastructure of the region. Above all, the conflict could reproduce another circle in shortest future if the local grievance and frustration that pushed idled youths towards Boko Haram violent extremism is not addressed; such as poverty, unemployment, lack of economic opportunities, and inequality.

## *Recommendations*

- The new Nigerian government must structurally change the socio-economic injustice and tackle political corruption that creates a supply line of willing Boko Haram adherents. Since at the heart of the remote cause of the uprising was poverty, social neglect and poor governance, Nigeria's new government should develop an

economic and political master-plan that specifically addresses youth unemployment; and minimizes the sense of detachment and alienation.

- The legal framework should be look into, especially criminalization rape
- There should be immediate release of family members of the group leaders, including their wives, unduly incarcerated by the security forces without evidence of aiding the group.
- There should be an improved regional communication, coordination and cooperation amongst countries contributing to the multilateral forces and who shares borderline with north-east Nigeria, for effective result; especially the Lake Chad Basin.
- Adequate security measures should be put in place, especially in schools and public facilities, in order to forestall future reoccurrence of Chibok experience.
- A systemic rehabilitation process should be set up in order to reintegrate released victims and internally displaced person (IDP) back into the society and normal life.
- Nigerian government should mobilize all its capabilities, including diplomacy and negotiation towards ending the conflict.
- Areas recaptured from the group must be adequately protected to prevent a rebound and revenge on the communities; and a functioning government restored. There must be considerable investment in new infrastructure and livelihood, and security; schools, hospitals and other social institutions. 

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# PROTECTION FROM GENDER-BASED VIOLENCE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

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**Abstract:** *Despite the lack of specific provisions in the European Convention on Human Rights regarding gender-based violence, the European Court of Human Rights has developed a substantial body of case-law in this area. It has been done through the interpretation and application of a number of provisions in the European Convention on Human Rights that are relevant to gender-based violence. This paper provides a review of the approach of the European Court of Human Rights in cases concerning gender-based violence. Namely, it is evident that a remarkable spate of cases dealing with gender-based violence is considered by the European Court of Human Rights, which provides very solid protection in this field. However, it seems that certain aspects of the case-law on gender-based violence are somewhat inconsistent. In this sense, having in mind that the judgments of the European Court of Human Rights are the main guidelines for the States in fulfilling their obligations arising from the Convention, it is very important for the Court to fully clarify its approach in this regard.*

**Keywords:** *Gender-Based Violence; Violence against Women; European Convention on Human Rights; European Court of Human Rights; Istanbul Convention*

## INTRODUCTION

The European Convention on Human Rights ('ECHR' or 'the Convention') is Europe's core human rights treaty, which guarantees the rights and freedoms it includes to everyone within the jurisdiction of the Member States of the Council of Europe. Based on the ECHR, the European Court of Human Rights ('ECtHR' or 'the Court') has issued a significant number of judgments and decisions as regards cases concerning gender-based violence ('GBV'),

despite the fact that the Convention does not include any specific provisions in that regard. However, there are a number of provisions in the Convention that have been identified as relevant to GBV, and were used by the ECtHR to develop an extensive case-law in this sphere. Those provisions are Article 2 (right to life), Article 3 (prohibition of torture), Article 4 (prohibition of slavery and forced labor), Article 6 (right to a fair trial), Article 8 (right to respect for private and family law), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Protocol 12 to the Convention (general prohibition of discrimination). Namely, based on the interpretation and application of these provisions, the ECtHR has developed standards regarding GBV and provided protection before the Court in this field. This paper has placed its focus on providing a review of the approach of the ECtHR in cases dealing with GBV. In that sense, it will first define the concept of GBV and the relevant international legal framework, especially having in mind that no consensus has been achieved yet as regards the meaning of the term 'GBV', which is often interchangeably used with the term *violence against women* ('VAW'). The second part of the paper will encompass analysis of the evolution and treatment of different forms of GBV in the case-law of the ECtHR.

A special focus will be placed on cases of domestic violence, and rape and sexual abuse, since most cases concerning GBV that are brought before the Court are related to these forms of GBV. The next part deals with the Istanbul Convention, as the most comprehensive and far-reaching international treaty to address VAW, exploring its use by the Court as a means for interpretation of the ECHR. Lastly, the results of the analysis as regards the approach of the ECtHR in cases dealing with GBV will be summarized.

## GENDER-BASED VIOLENCE: DEFINITION AND INTERNATIONAL LEGAL FRAMEWORK

The term *gender-based violence* and the term *violence against women* are often used interchangeably, including in some international conventions (Duban and Radacic 2017, 44), as it has been widely acknowledged that most gender-based violence is inflicted on women and girls, by men (World Health Organization 2013; World Health Organization 2017). However, it seems that there are not synonymous, as GBV is increasingly used as a more expansive term compared to VAW (World Health Organization 2013; World Health Organization 2017). The CEDAW General recommendation 19 (UN Committee on the Elimination of Discrimination against Women (CEDAW) 1992) gave the first international law definition of GBV in 1992, as "a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men". It further stipulates that "the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately" (CEDAW 1992).



The widespread use of the term 'GBV' followed after its inclusion in the UN Declaration on the Elimination of All Forms of Violence against Women in 1993 (UN General Assembly 1993). It defined the term 'VAW' as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (UN General Assembly 1993, Article 1). Accordingly, it seems that the term 'GBV' was originally adopted in order to articulate the problem regarding VAW. However, although VAW is defined by reference to GBV, there is no definition of the term 'gender'.

The first regional binding instrument on violence against women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women from 1994 (Organization of American States (OAS) 1994), known as Convention of Belém do Pará, defines VAW as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere". The term 'GBV' is not used in this Convention.

The second regional binding instrument on violence against women, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa from 2003 (African Union 2003), known as Maputo Protocol, uses the term 'gender-based violence against women'. Namely, the State Parties to the Protocol agree "to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women". The term 'VAW' is defined as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war" (African Union 2003, Article 1).

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence from 2011 (Council of Europe 2011), known as Istanbul Convention, which is the third regional binding instrument, also uses the term 'gender-based violence against women'. Unlike the Maputo Protocol, the Istanbul Convention provides a definition of the term 'gender-based violence against women', as "violence that is directed against a woman because she is a woman or that affects women disproportionately" (Council of Europe 2011, Article 3). Moreover, the Istanbul Convention defines as well the term 'gender', as "the socially constructed roles, behaviors, activities and attributes that a given that a given society considers appropriate for women and men" (Council of Europe 2011, Article 3). VAW is defined as "a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (Council of Europe 2011, Article 3).

The use of the term 'gender-based violence against women', as well as the definition of the term 'gender', implies that GBV does not have to be directed only at women. Moreover, in this sense, the Preamble of the Istanbul Convention states that "women and girls are exposed to a higher risk of gender-based violence than men" (Council of Europe 2011). Similarly, the Explanatory Report to the Istanbul Convention states that "the fact that women experience gender-based violence, including domestic violence, to a significantly larger extent than men can be considered an objective and reasonable justification to employ resources and take special measures for the benefit of women victims only" (Council of Europe 2011a, 10). It also states that "violence against women, including domestic violence, is one of the most serious forms of gender-based violations of human rights in Europe" (Council of Europe 2011a, 1). Thus, it seems that there is a tendency to use the term 'GBV' in a broader sense, in terms of violence that is being directed at a person on the basis of gender, and that also encompass VAW as one of its forms. It implies that men can also be targets of GBV, and, consequently, that the terms 'GBV' and 'VAW' are not synonymous. Moreover, it is explicitly stated in the Preamble of the Istanbul Convention that "domestic violence affects women disproportionately, and that men may also be victims of domestic violence" (Council of Europe 2011).

However, it should be also noted that the Explanatory Report to the Istanbul Convention foresees that "the use of the expression 'gender-based violence against women' (...) is understood as equivalent to the expression 'gender-based violence' used in the CEDAW Committee General Recommendation No. 19 on violence against women (1992), the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993) (...)" as well as that "this expression is to be understood as aimed at protecting women from violence resulting from gender stereotypes, and specifically encompasses women"(Council of Europe 2011a, 8).

On the other hand, various UN entities use the term 'GBV' in its broad sense. According to the UN High Commissioner for Human Rights, GBV is "any harmful act directed against individuals or groups of individuals on the basis of their gender" (UN Human Rights Office of the High Commissioner 2014). It recognizes that "victims of such violence continue to be disproportionally women and girls", but that "men and boys are also targets of gender-based and sexual violence" (UN Human Rights Office of the High Commissioner 2014). Namely, GBV is used as "an umbrella term used to distinguish common violence from violence that is directed against individuals or groups of individuals on the basis of their sex, gender identity or socially ascribed gender roles" (UN Human Rights Office of the High Commissioner 2011, 29). However, it is noteworthy that this definition is supplemented by the assertion that "while women, men, boys and girls can all be victims of gender-based violence, the primary victims have been women and girls" (UN Human Rights Office of the High Commissioner 2011, 29). In addition, it is also recognized that "violence against lesbian, gay, bisexual, transgender and intersex people also often based on gender" (UN Human Rights Office of the High Commissioner 2011, 29).

The UN High Commissioner for Refugees also employs an inclusive conception of the term 'GBV', which is "used to distinguish common violence from violence that targets individuals or groups of individuals on the basis of their gender" (UN High Commissioner for Refugees 2003, 10). Namely, according to the UN High Commissioner for Refugees, GBV "also hinders the development of men and boys" (UN High Commissioner for Refugees 2003, 10). However, it is recognized as well that "gender-based violence has a devastating impact on the lives of women and girls who are the majority of victims/survivors" (UN High Commissioner for Refugees 2003, 10).

### APPROACH OF THE EUROPEAN COURT OF HUMAN RIGHTS TO CASES CONCERNING GENDER-BASED VIOLENCE

The European Court of Human Rights has issued a number of important judgments that formulate standards in the sphere of protection from GBV, which cover almost all types of GBV. As it has been widely acknowledged that most gender-based violence is inflicted on women and girls, for the purpose of the analysis of the jurisprudence of the ECtHR in this sense, the term 'VAW' will be used as a synonym of GBV. In fact, the thematic factsheet issued by the ECtHR as regards its case-law on GBV use the term 'VAW' (European Court of Human Rights 2020). Namely, it refers to various forms of VAW addressed in the case-law of the Court.

The Court has examined a number of cases concerning violence against women, committed both by the state and private individuals. It has addressed almost all forms of VAW (European Court of Human Rights 2020), such as:

1. Domestic violence (Airey v. Ireland (1979); Osman v. the United Kingdom (1998); Kontrovà v. Slovakia (2007); Bevacqua and S. v. Bulgaria (2008); Branko Tomašić and Others v. Croatia (2009); Opuz v. Turkey (2009); E.S. and Others v. Slovakia (2009); D.M.D. v. Romania; N. v. Sweden (2010); A. v. Croatia (2010); Hajduová v. Slovakia (2010); E.M. v. Romania (2012); Y.C. v. the United Kingdom (2012); Kalucza v. Hungary (2012); Kowal v. Poland (2012) (decision on admissibility); Irene Wilson v. the United Kingdom (2012) (decision on admissibility); Valiulienė v. Lithuania (2013); Eremia and Others v. the Republic of Moldova (2013); D.P. v. Lithuania (2013) (strike-out decision); Rumor v. Italy (2014); Durmaz v. Turkey (2014); Wasiewska v. Poland (2014) (decision on admissibility); Civek v. Turkey (2016); Halime Kilic v. Turkey (2016); M.G. v. Turkey (2016); Bălsan v. Romania (2017); Talpis v. Italy (2017); O.C.I. and Others v. Romania (2019) (Committee judgment); Kurt v. Austria (2019); Volodina v. Russia (2019))
2. Rape and Sexual Abuse (X and Y v. the Netherlands (1985); C.R. v. the United Kingdom (1995); S.W. v. the United Kingdom (1995); Aydin v. Turkey (1997); M.C. v. Bulgaria (2003); Maslova and Nalbandov v. Russia (2008); P.M. v. Bulgaria (2012); I.G. v. Republic of Moldova (2012); M. and Others v. Italy and Bulgaria (2012); P. and S. v. Poland (2012); O'Keeffe v. Ireland (2014) (Grand Chamber); W. v. Slovenia (2014); M.A.

- v. Slovenia and N.D. v. Slovenia (2015); S.Z. v. Bulgaria (2015); I.P. v. the Republic of Moldova (2015); Y. v. Slovenia (2015); M.G.C. v. Romania (2016); I.C. v. Romania (2016); B.V. v. Belgium (2017); E.B. v. Romania (2019) (Committee judgment))
3. Risk of ill-treatment in case of expulsion (for fear of):
    - a. Female genital mutilation (Collins and Akaziebie v. Sweden (2007) (decision on admissibility); Izevbekhai v. Ireland (2011) (decision on admissibility); Omeredo v. Austria (2011) (decision on admissibility); Sow v. Belgium (2016); Bangura v. Belgium (2016) (strike-out decision))
    - b. Honour crime and ill-treatment by the family (A.A. and Others v. Sweden (2012); R.D. v. France (2016))
    - c. Risk of trafficking or re-trafficking (L.R. v. the United Kingdom (2011) (strike-out decision); V.F. v. France (2011) (decision on admissibility); F.A. v. the United Kingdom (2013) (decision on admissibility); O.G.O. v. the United Kingdom (2014) (strike-out decision))
    - d. Social exclusion (N. v. Sweden (2010); W.H. v. Sweden (2015) (Grand Chamber); R.H. v. Sweden (2015))
  4. Police violence (Aydin v. Turkey (1997); Y.F. v. Turkey (2003); Maslova and Nalbandov v. Russia (2008); Yazgülyilmaz v. Turkey (2011); B.S. v. Spain (2012); Izci v. Turkey (2013); AfetSüreyyaEren v. Turkey (2015); DilekAslan v. Turkey (2015); EbruDincer v. Turkey (2019))
  5. Ill-treatment in detention (Juhnke v. Turkey (2003))
  6. Trafficking in human beings (Rantsev v. Cyprus and Russia (2010); L.E. v. Greece (2016); J. and Others v. Austria (2017))
  7. Violence by private individuals (Sandra Janković v. Croatia (2009); Ebcin v. Turkey (2011); Irina Smirnova v. Ukraine (2016))

In a number of key judgments concerning different forms of VAW, the ECtHR has formulated and developed various principles and standards that lay the foundation for securing protection from GBV. Given that most cases concerning GBV that are brought before the Court are related to domestic violence, and rape and sexual abuse, the main focus will be placed on these type of cases.

The cases *Airey v. Ireland* (9 October 1979, Series A no. 39) and *Osman v. the United Kingdom* (28 October 1998, Reports of Judgments and Decisions 1998-VIII) do not deal directly with violence against women. However, they are important in this regard as they lay a foundation for the concepts subsequently used by the Court.

The case *Airey v. Ireland* (9 October 1979, Series A no. 39) involves violence against women since Mrs Aireysought to separate from her husband, who threatened her with physical violence, and occasionally subjected her to physical violence. Due to lack of financial resources and in the absence of legal aid provided by the State, she had been unable to engage a lawyer to represent her before the Court. Among the other, she alleged a violation

of Article 6 and Article 8. The ECtHR found that the high costs of seeking a separation order before the Irish courts have violated the applicant's right to access to court under Article 6 of the ECHR. The Court also found that the inability to obtain a judicial separation from her husband constituted a violation of the applicant's right to respect for her private and family life under Article 8 of the ECHR.

The importance of this judgment is in recognizing that Article 8, besides its primarily negative undertaking, also imposes a positive obligation inherent in an effective respect for private or family life. Namely, this case is one of the founders of the concept of positive obligations arising under the Convention for the State Parties.

In the case *Osman v. the United Kingdom* (28 October 1998, Reports of Judgments and Decisions 1998-VIII), the Court further articulated the responsibility of the national authorities for private acts. In this case, the applicant's husband was killed by her son's former teacher, while her son was seriously wounded. Before the accident took place, the teacher had already threatened the applicant and her family. She complained that the national authorities have failed to protect the right to life of her husband from the threat posed by the teacher. However, the ECtHR did not find a violation of Article 2 of the Convention. According to the Court's reasoning, Article 2 implied a positive obligation on the authorities to take preventive measures to protect an individual whose life is at risk from the criminal acts of another individual. Yet, the Court concluded that the facts in the case did not show that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk from the teacher.

Accordingly, the national authorities did not breach Article 2. This case is important because the Court determined criteria to be followed in order to establish that the national authorities have violated their positive obligation to protect the right to life. According to the Court, "it must be established (...) that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk" (*Osman v. the United Kingdom*, 28 October 1998, § 115, Reports of Judgments and Decisions 1998-VIII). These criteria are known as the 'Osman test'.

In its further cases, the Court continued to use the 'Osman test' and applied it in domestic violence cases. Namely, in the case *Kontrová v. Slovakia* (no. 7510/04, 31 May 2007), the Court extended the positive obligations inherent in Article 2 of the Convention to the domestic context. It should be taken into account that the Court did not directly address the abuse suffered by the applicant, but the violation was found as regards the rights of the children. Nevertheless, the significant aspect of this case is that the findings explicitly apply to domestic violence and have unequivocally contributed to the development of the case-law of the Court (McQuigg 2011, 50). The findings of the Court in the case *Kontrová v. Slovakia* were subsequently confirmed two years later in its judgment delivered in the case *Branko Tomašić and Others v. Croatia* (no. 46598/06, 15 January 2009).

The concept of positive obligations was further applied and articulated in the case *Bevacqua and S. v. Bulgaria* (no. 71127/01, 12 June 2008). The applicant in this case was a victim of domestic violence. The case represents a landmark case since the Court held for the first time that there was a violation of the Convention concerning the actual abuse suffered by the applicant herself, as a victim of domestic violence. However, the case *Bevacqua and S. v. Bulgaria* was criticized because of the absence of focus on the discrimination aspect (Hasselbacher 2010, 208-209).

The discrimination aspect of violence against women was addressed by the Court in the case *Opuz v. Turkey* (no. 33401/02, ECHR 2009). Namely, this case is considered a landmark case because for the first time in a domestic violence case the Court held that there had been a violation of Article 14 of the Convention (prohibition of discrimination, in conjunction with Article 2 and Article 3). Namely, the Court recognized that domestic violence affected mainly women, while the general and discriminatory judicial passivity in Turkey created a climate that was conducive to it. According to the Court's findings, the violence suffered by the applicant and her mother could therefore be regarded as having been gender-based and discriminatory against women. Despite the reforms carried out by the Turkish Government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as found in the applicant's case, indicated an insufficient commitment on the part of the authorities to take appropriate action to address domestic violence (*Opuz v. Turkey*, no. 33401/02, § 200, ECHR 2009).

It is important to emphasize that the Court's judgments in the cases *Bevacqua and S. v. Bulgaria* and *Opuz v. Turkey* "recognize and advance the due diligence standard in the context of domestic violence" (Hasselbacher 2010, 203). Namely, there are several minimums foreseen that provide practical substance in order to assess the adherence of the state "to the principles of protection, investigation, and prosecution" (Hasselbacher 2010, 203).

These minimums incorporate the availability of a judicial mechanism in order to obtain protection measures, as well as prosecution for all crimes of domestic violence in the public interest. As it was pointed out, the Court went a step further in the case *Opuz v. Turkey* and recognized that the failure of the national authorities to exercise due diligence represents a gender-based discrimination.

In the case *Valiulienė v. Lithuania* (no. 33234/07, 26 March 2013), concerning the complaint by a woman who was a victim of domestic violence about the state's failure to investigate her allegations of ill-treatment and to bring her partner to account, the adequateness of the 'Osman test' in situations of domestic violence was criticized by Judge de Albuquerque. Namely, in the Concurring opinion he emphasized that the stage of an 'immediate risk' was often too late for the national authorities to intervene. Namely, "the recurrence and escalation inherent in most cases of domestic violence makes it somehow artificial, even deleterious, to require an immediacy of the risk" (*Valiulienė v. Lithuania* 2013). In that sense, "a more rigorous standard of diligence is especially necessary in the context of certain societies" (*Valiulienė v. Lithuania* 2013). He concludes that "the emerging due



diligence standard in domestic violence cases is stricter than the classical Osman test" (*Valiulienė v. Lithuania* 2013).

In the case *Talpis v. Italy* (no. 41237/14, 2 March 2017), concerning the conjugal violence suffered by the applicant, which resulted in the murder of her son and her own attempted murder, "the Court seems to follow the way paved by Judge de Albuquerque" (De Vido 2017, 5). According to the Court, "the risk of a real and immediate threat (...) must be assessed taking due account of the particular context of domestic violence". Furthermore, "In such a situation it is not only a question of an obligation to afford general protection to society (...) but above all to take account of the recurrence of successive episodes of violence within the family unit" (*Talpis v. Italy*, no. 41237/14, § 122, 2 March 2017).

Similarly, in the case *O'Keeffe v. Ireland* (no. 35810/09, § 146, ECHR 2014), concerning the responsibility of the national authorities for the sexual abuse of a nine year old schoolgirl by a lay teacher in an Irish National School, the Court emphasized the importance of the context in which the human violation occurred (De Vido 2017, 5). In the Court's view, "having regard to the fundamental nature of the rights guaranteed by Article 3 and the particularly vulnerable nature of children, it is an inherent obligation of government to ensure their protection from ill-treatment, especially in a primary-education context, through the adoption, as necessary, of special measures and safeguards" (*O'Keeffe v. Ireland* [GC], no. 35810/09, § 146, ECHR 2014).

However, in the judgment delivered in the case *Kurt v. Austria* (no. 62903/15, 4 July 2019) two years later, concerning the murder of the applicant's son by his father after previous allegations of domestic violence by the applicant against the father, the Court followed the classical 'Osman test'. Five days after the judgment in the case *Kurt v. Austria*, the Court issued a judgment in the case *Volodina v. Russia* (no. 41261/17, 9 July 2019), concerning the applicant's complaint that the national authorities had failed to protect her from repeated domestic violence, including assaults, kidnapping, stalking and treats. The applicant also alleged that the current Russian legal system is not adequate in order to deal with such violence and discriminatory against women. In this case, the Court applied the approach established in the case *Talpis v. Italy* regarding the obligation of the national authorities under Article 3 of the Convention. The issues that are raised in rape and sexual abuse cases are to a large extent comparable to those that are raised in domestic violence cases. Namely, those are the issues of the existence and scope of the states' positive obligations, the article under which the Court should examine the violation alleged in the complaint, as well as the necessary means in order to achieve effective protection of the victims.

The first rape case raised before the ECtHR is the case *X and Y v. the Netherlands* (26 March 1985, Series A no. 91). The case concerned the responsibility of the state for the rape of a girl with a mental handicap (the second applicant), in the home for children with mental disabilities where she lived, the day after her sixteenth birthday (which was the age of consent for sexual intercourse in the Netherlands) by a relative of the person in charge. The girl



deemed unfit to sign an official complaint due to her low mental age, so her father (the first applicant) signed in her place. However, the proceedings were initiated against the perpetrator as the girl had to file the complaint itself. The Court recalled that in addition to the primary negative undertaking of the State in the context of Article 8 of the Convention, there may also be positive obligations inherent in an effective respect for private or family life.

Accordingly, the Court found that the protection afforded by civil law in respect of the second applicant was insufficient as fundamental values and essential aspects of private life were concerned in the case. Therefore, effective deterrence was necessary in this area, which could be achieved only by criminal law provisions. Taking in consideration the failure of the Dutch Criminal Code to provide her with practical and effective protection, as well as the nature of the wrongdoing, the Court found that the second applicant had been the victim of a violation of Article 8. The judgment delivered in the case *X and Y v. the Netherlands* is considered a landmark judgment as it developed the concept of positive obligations regarding rape cases.

The cases *C.R v. the United Kingdom* (22 November 1995, Series A no. 335-C) and *S.W. v. the United Kingdom* (22 November 1995, Series A no. 335-B) put an end of the "marital rape exemption". These cases are also specific because they were brought before the ECtHR by the men who were convicted of rape and attempted rape.

Another important case that concerns rape is *Aydin v. Turkey* (25 September 1997, Reports of Judgments and Decisions 1997-VI). In this case, the Court considered rape as a form of torture under Article 3 of the Convention for the first time. The case concerned a complaint by a young Turkish woman of Kurdish origin (17 years old at the relevant time), who was arrested without explanation and taken into custody, along with two other members of her family. She was blindfolded, beaten, stripped naked, sprayed with cold water from high-pressure jets while being spun in a tire before being raped by a member of the security forces, and then again beaten for about an hour by several people. A subsequent medical examination by a doctor, who had never before dealt with a rape case, found her hymen torn and widespread bruising on her thighs. The Court emphasized that rape of a detainee by a state official must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, it stressed that rape leaves deep psychological scars on the victim. The Court found that both the accumulation of acts of physical and mental violence inflicted on the applicant while in custody and the especially cruel act of rape to which she had been subjected had amounted to torture, in violation of Article 3 of the Convention. In addition, an allegation of rape by an official in custody required that the victim be examined with all appropriate sensitivity by independent doctors with the relevant expertise. That did not occur, making the investigation deficient and denying the applicant access to compensation, in violation of Article 13 of the Convention.

The case *M.C. v. Bulgaria* (no. 39272/98, ECHR 2003-XII) confirmed that rape can also be considered under Article 3 in situations that only involve non-state actors. It confirmed as

well the content of the positive obligations of the state in terms of effective implementation of measures of protection, and provided the definition of rape. Namely, one of the most significant findings of the Court in this case is the emphasis on consent rather than force regarding the definition of rape. The judgment delivered in the case *M.C. v. Bulgaria* is considered a landmark judgment as the national authorities are now obliged to prosecute all forms of rape, regardless of the fact whether the victim has actively resisted. The Court used a gender-sensitive approach in this case, in order to achieve such an improvement (Radacic 2008, 130). However, there are also some critics addressed to the case, as regards the lack of articulation of the issues in question as inequality issues. Namely, in the acquaintance-rape case of *M.C. v. Bulgaria*, the inadequacies of Bulgarian law in dealing with cases of rape were treated only as a violation of the substantive law (Londono 2009, 657-667).

Furthermore, in cases such as *M.G.C. v. Romania* (no. 61495/11, 15 March 2016) and *I.C. v. Romania* (no. 36934/08, 24 May 2016), the Court established that States have a positive obligation to adopt and apply criminal law provisions that effectively punish rape, and that they must especially provide protection for children and other vulnerable persons.

In the case *E.B. v. Romania* (no. 49089/2010, 19 March 2019), the Court applied the existing case-law as regards the criminalization of rape and sexual violence, as well as the context-sensitivity that is required regarding vulnerable applicants. The obligation based in the ECHR to criminalize may sound strange.

Namely, these types of cases expand the State's coercive power, while most of the case-law of the Court, for example under Articles 5, 6 and 7 of the ECHR, is focused on constraining the State's coercive power and the domestic criminal law. The obligation for the State to criminalize constitutes a part of States' so-called "coercive obligations" (Heri 2009).

## ISTANBUL CONVENTION AS A MEANS FOR INTERPRETATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The Istanbul Convention is "the most far reaching international treaty to tackle violence against women" (Organization of American States and Council of Europe 2014, 89). It is particularly important due to the fact that "it breaks new ground by requesting states to criminalize the various forms of violence against women, including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilization" (Organization of American States and Council of Europe 2014, 89).

The principles and standards developed in the case-law of the ECtHR as regards cases of VAW are now incorporated in the Istanbul Convention and thus became legally binding (Duban and Radacic 2017, 40). In that sense, the Istanbul Convention incorporates the 'due diligence' standard and defines it as the States' obligation to "prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors" (Council of Europe

2011, Article 5). The argumentative moves of the ECtHR in certain cases concerning VAW seems to show that the provisions of the Istanbul Convention “can constitute ‘relevant rules of international law’ under Article 31(3)(c) of the Vienna Convention on the Law of the Treaties (...) in the interpretation of applicable articles of the European Convention on Human Rights” (De Vido 2017, 1).

For example, the judgment delivered by the Court in the case *Talpis v. Italy* demonstrates that the provisions of the Istanbul Convention are used as relevant rules of international law in the interpretation of the ECHR, in order to identify the obligations of the national authorities in preventing domestic violence (*Talpis v. Italy*, no. 41237/14, § 58, 2 March 2017).

In this sense, when looking into the alleged violation of Article 3, the Court stresses that “special diligence is required in dealing with domestic violence cases” and recognizes that “the specific nature of domestic violence as recognized in the Preamble to the Istanbul Convention (...) must be taken into account in the context of domestic proceedings” (*Talpis v. Italy*, no. 41237/14, § 129, 2 March 2017). Furthermore, the Court emphasized that “the Istanbul Convention imposes a duty on the States Parties to take ‘the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings” (*Talpis v. Italy*, no. 41237/14, § 129, 2 March 2017).

## CONCLUSION


Given that it has been widely acknowledged that most GBV is inflicted on women and girls, by men, the term *gender-based violence* and the term *violence against women* are often used interchangeably, including in some international conventions. As there is an increasing tendency to use GBV as a broader term compared to VAW, it seems that the two terms are not synonymous. However, it should not be forgotten that using the “gender based” aspect is very important as it emphasizes the fact that most forms of violence against women have its roots in the inequality of power between women and men.

The ECtHR has built up a substantial body of jurisprudence regarding almost all forms of GBV. Namely, despite the lack of specific provisions in the ECHR concerning GBV, the Court has developed an extensive case-law in this field, by using a number of provisions in the Convention as relevant to GBV. In this sense, the Court repeatedly applied the Articles 2, 3, 4, 6, 8, 13 and 14 in the examination of GBV cases. The Court dealt mostly with cases related to domestic violence, and rape and sexual abuse, but it also addressed other forms of GBV, such as ill-treatment in detention, police violence, female genital mutilation, honor crime, forced marriage, risk of trafficking and re-trafficking, social exclusion, trafficking in human beings, etc.

There have been very positive developments within the case-law of the Court concerning different forms of GBV, such as entailing both negative and positive obligations for the State in the context of Articles 2, 3, 4 and 8; requiring from States to also act in situations occurring solely in the private sphere; determining that GBV amounts to discrimination; establishing the principle that in certain circumstances domestic violence and rape may fall under Article 3, etc.

It seems that, in general, the approach of the Court followed a similar path when examining the different forms of GBV. However, there are a few cases, such as the case *Kurt v. Austria* (no. 62903/15, 4 July 2019), where it seems that the Court departed from its previously established case-law and did not take into account certain standards regarding domestic violence. Namely, this approach carries a potential to undermine the progress made within the case-law of the Court concerning domestic violence cases and create uncertainty as regards the standards that should be followed in such cases. At the same time, it is also noteworthy that at the moment of writing this paper, the judgment delivered in this case is still not final in terms of Article 44(2) of the Convention. Namely, it remains to be seen whether the Court will clarify this issue in its future case-law.

It is evident from the analysis conducted in respect of the case-law of the ECtHR that the spate of cases on GBV considered by the Court is remarkable, and provides solid protection from different forms of GBV. However, as it seems that certain aspects of the case-law of the Court on GBV are somewhat inconsistent, it is very important for the Court to fully clarify its approach in this sense, particularly given that its judgments are the main guidelines for the States in fulfilling properly their obligations arising from the Convention.

Another significant development as regards the protection from GBV before the ECtHR is the entry into force of the Istanbul Convention. Namely, as seen from the analyses conducted, it seems that the provisions of the Istanbul Convention, as relevant rules of international law, are useful in order to expand the scope of application of the Convention provisions that are relevant in cases concerning GBV. 

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# SOFT POWER CONTEXT OF CHINESE INVESTMENTS TO THE EUROPEAN UNION: CHALLENGES VS. OPPORTUNITIES

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**Abstract:** *This paper presents a constructivist take on soft power, by analyzing the contextual factors which influence Chinese investments (COFDI) to the EU as a relevant soft power resource. The contextual analysis shows which constraining and stimulating (internal and external) factors condition COFDI in leveraging soft power for China. Additionally, the article provides solutions for soft power optimization, since soft power resources aim to entice and foster cooperative relations toward a 'win-win' behavior. The issues presented here have profound implications for future studies on soft power and the political economy of Chinese investments in the EU.*

**Keywords:** *Chinese Investments; EU; Soft Power; Context Analysis; Constructivism*

## INTRODUCTION

The nature of Chinese investments (hereinafter COFDI<sup>1</sup>) in its possibility to leverage benefits for China, influence foreign environments, tap into technology and provide innovation opportunities, represents a prime tool of economic and political importance to China's rise. COFDI, as part of China's economy, possesses the capacity to leverage soft power or to undermine it, since fears or confidence in it are inseparable parts of perceptions on China. Even though COFDI soft power is able to thrive in many guises, its social identity implies that a multidimensional context and conditions shape its ability to leverage power. External and internal, political and economic factors exercise power over COFDI's actorness

<sup>1</sup>COFDI is usually referred in the literature as a technical term for Chinese outward FDI (foreign direct investment).

as soft power resource. COFDI operational character, its firm specific and industrial profile, relation to both home country political style and interaction with host country market conditions, will primarily affect the possibility for leveraging soft power. Additionally, the compatibility of home country profile and the host country character can produce cultural, political and economic implications for both. These conditions are further buttressed by the historical relations of both countries as well as their position in the global power structures.

Given Chinese background of economic primacy, relations with the EU were considered strategic in a sense that EU possessed goods and advanced technology that would provide China sustainability in its further development. The governmental innovation policy related to China's central planning plays a relevant role in Chinese innovation development (Van Someren & Van Someren-Wang, 2014). The "shadow of the Chinese state" (Brown 2008) in overtaking European economies is mainly evoked in WE (Western Europe) countries, where Germany presents one of the most attractive destinations of market and technology-seeking acquisitions (Hanemann and Huotari, 2016). This way the phenomena of COFDI gave rise to many debates regarding Chinese expansion to the 'Western world'. The EU is also known for its advantages of its open single market, the benefit of a single currency and unrestrictive monetary policy, integration in supply chains, investor friendly policies, and credit access to businesses. COFDI to the EU is especially interesting soft power case, since it has the opportunity to leverage advanced know-how, brands, provide market share and provide political leverage over a globally relevant region. In addition, EU-China economic integration has more potential and opportunities than US-China since this relationship has a globally determining character in shifting global policy, therefore more responsibility is required to be adequately managed.

As a consequence, European countries are divided whether COFDI is a friend or a foe. In such an environment, the influencing structure and context has implications on the soft power prosperity of COFDI to the EU. In order to assess the same, this article is structured as follows. The next section informs how and why COFDI to the EU ought to be analyzed as potential soft power resource. It highlights COFDI economic and political importance to its home country and how it can contribute to its growth. The third section deals with the context under which COFDI to the EU thrives by analyzing the challenging and beneficial aspects for leveraging soft power. It is within this setting the purpose of this article - namely to explain the main influencing circumstances on COFDI and propose directions under which soft power optimization can occur toward a 'win-win' cooperative solution. Therefore, the aptness of a constructivist approach is fitting to capture COFDI social character and the context in which it thrives.

## SOFT POWER AND CHINESE INVESTMENTS TO THE EU

Soft power is associated with resources invested in attraction and strategies behind using these resources to accomplish actors' interests (Chitty *et al.* 2016). It is often used to epitomize the capability of a state to influence other countries to do what it wants them to i.e. co-optation through attraction in setting moral example and fondness (Nye 1990; 2004; 2011). Some conceptualized power as an end itself, while others as a means to an end (Berenskoetter and Williams 2007). This concept is also referred in the CCP (Chinese Communist Party) broader nation building program (Edney 2012). Chinese investments have already been discussed as part of China's soft power package, referring mainly to the BRI project (Arif 2017; Clarke 2017; Zhou & Esteban, 2018) and Chinese investments in Africa (Bodomo 2009; Fijałkowski 2011; Jaroslaw & Kaluzynska 2013). At first Nye (soft power concept creator) excluded investments as soft power tool, but later Kurlantzick (2007, 1) suggested that investments are part of the business toolset (along with trade and foreign aid) for attraction of the Chinese economic model. He added that in the current Asian context, soft power "implies all elements outside of the security realm". The EU has on many turns recognized the importance of COFDI in its relations with China (See European parliament, 2018), especially since the onset of 2008 Global Financial Crisis (also the Great Recession) when a mini COFDI tsunami<sup>2</sup> happened. Additionally, Eastern European countries are keener on Chinese capital influx, but receive less in comparison to the Western part. The majority of studies, dedicated to COFDI in developed countries, emphasize the asset upgrading, asset augmenting or in other words strategic asset seeking perspective of these companies. The 'spillovers' which happen through the internationalization of Chinese MNEs present a connecting juncture for overcoming economic gaps and stimulating integrated economies. This is in line with China's neo-techno nationalism<sup>3</sup>. For the most part, many COFDI invest in R&D centers in Europe in order to include Chinese firms in innovation ecosystems. With the aim of providing opportunities and facilitating the internationalization process, Chinese enterprises' overseas aspire to become more diversified and to advance from low value-added activities through strategic industrial upgrading and innovation to higher value added products. Those are the reasons why Western European countries are more interesting for COFDI than the Eastern EU market. In the same vein, market-seeking is as much as relevant as asset-seeking determinant (Deng 2013). In both senses, Chinese MNEs play the role of transactional actors, supporting development and leveraging advantages through OFDI, whether it is know-how and technology or profit increase. The political significance is translated in COFDI grand projects such as the BRI<sup>4</sup> (Belt and Road Initiative). This project is in line with China's sustainable development policy of increasing economic integration between

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<sup>2</sup>COFDI to the EU made a fifty fold increase in the period of 8 years (2008-2016) (Hanemann and Huotari 2018).

<sup>3</sup>China's strategy is said to be characterized by neo-techno nationalism, where technological development pursued through globalization opportunities supports national, economic and security interests of China. See: Shim and Shin (2016).

<sup>4</sup>EU countries which joined the BRI are Greece, Portugal, Italy, Austria, Luxembourg, Hungary, Poland and Bulgaria.

the countries along its corridors, covering primarily Asia and Europe. It is expected that Chinese exporters will hugely benefit from this initiative and the 'costs of foreignness' with European countries would be reduced while at the same time economic trade and cooperation with the neighboring states and the far-off states in Europe would be increased. Many argue that although the purpose of these projects is better integration of China within the global economy, establishing a parallel system of economic governance where China is the main player is an underlying objective. The establishment of NDB (New Development Bank), a WB (World Bank) alternative, and the establishment of AIIB (Asian Infrastructure Investment Bank), an IMF alternative as the main body that funds the BRI, has given further momentum of Chinese international role in financial aid and investment. Through this project China is matching US leadership role by establishing itself as a regional and global power, where COFDI plays a germane part.

## A CONTEXTUAL ANALYSIS OF COFDI SOFT POWER POSSIBILITIES

Constructivism assumes that meaning is "socially constructed" based on the meaning given to the material reality (Wendt 1992). Hence constructivists argue that actions, interactions, identity, beliefs, norms, interests and context, all have the influence to shape the international environment. Since the possibility to leverage soft power is also heavily influenced by the same factors, a constructivist approach through contextual analysis will detect the implicating conditions which encourage or challenge soft power capacity of COFDI to the EU. The thing about soft power is that it has inherently a 'win-win' (cooperative) character, which is a prerequisite for its successfulness. Therefore, adding the solutions component, which is later described in detail, assists in optimizing and improving the strategy and potential for soft power effectiveness.

### *Challenges*

The abrupt change in economic interaction with the EU (COFDI burgeoning<sup>5</sup>), which at the same time supported China's continuous growth (He, et al. 2019), triggered the alarm and led to the CAI<sup>6</sup> (Comprehensive Agreement on Investment) initiation. This was however, one among the many obstacles (Table 1) for COFDI soft power. Furthermore, acquisition of high-tech companies (especially German), activated the zero-sum lenses calling them asset stripping investments of European brands and reputation (Richet 2014). This was also coupled with the overstated US trade deficit with China (also *zero-sum* view since according to Stiglitz (2017), the US has overall profited of trade surpluses with many other countries) in the context of US-China high technology rivalry (which includes 5G, Artificial Intelligence,

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<sup>5</sup>See: *supra* note 2.

<sup>6</sup>The first investment agreement negotiated on EU level (ever since 2013, and up to 2020 still not concluded) considered a paving contract for future investment agreements.

semiconductors, the Internet of Things and quantum computing) where the EU was propelled to take the middle ground (European Think-tank Network on China 2020). The established Western structures show reluctance to COFDI (implicitly seen as part of China) due to the natural fears of power transition. As a result, de-globalizing and protectionist trends<sup>7</sup> started occurring. Consequently, EU FDI screening mechanism for third countries<sup>8</sup> (inspired by the US counterparts<sup>9</sup>) was introduced and a change in tone happened, addressing China as EU's "systemic rival", instead of the previous "strategic partner" (Berkofsky 2019).

Another soft power challenge are the state-controlled COFDI involved in the crucial state sectors such as transportation, energetics, financial services, health, real estate and insurance. This is also related to the EU implicit perceptions of COFDI as *Pax Sinica* instrument, which is further buttressed by large cultural distance and different business practices – also in line with the yellow peril fears<sup>10</sup>. Fears of political leverage that China could use investments as a diplomatic instrument in order to get politically favorable outcomes (European Parliament 2018) negatively impacts COFDI perceptions. This especially refers to cases when EU level decisions in relation to China (or if it concerns China as a stakeholder) need to be made, some member states might oppose them. This was already the case when Greece, Hungary, and Croatia (as members of the BRI) opposed any strong language in the EU statement which supposed to support the ruling of the tribunal at the Permanent Court of Arbitration on the disputes in the South China Sea<sup>11</sup>.

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<sup>7</sup> Protectionist trade-restrictive measures between WTO members have increased seven-fold in the past years (2016-2018) which started with the bilateral tariffs on trade between the US and China; for more see WTO (2018). Such is Trump's de-globalist "trade war" based on protectionist policies toward China which assumes that trade is a zero-sum game. This is pure anti-globalization stance toward open markets and unhindered capital flows which according to this view has served China and damaged the US.

<sup>8</sup> The EU investment screening regulation, initiated by the governments of Germany, France and Italy, was adopted and enforced it as of 10.04.2019. See European Commission (2020).

<sup>9</sup> See more the official U.S. Department of Treasury website on the Committee on Foreign Investment in the United States (CFIUS), <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius> (25 March 2020).

<sup>10</sup> The Yellow Peril is a metaphor for East Asians as an existential danger and threat to the Western world. See Svetličič (2020).

<sup>11</sup> On July 12, 2016, the Permanent Court of Arbitration in The Hague released the ruling of the arbitral tribunal constituted under the UN Convention on the Law of the Sea (UNCLOS) on the case initiated by the Philippines in 2013 regarding China's claims and activities in the South China Sea. The arbitral tribunal ruled overwhelmingly in favour of the Philippines, determining that major elements of China's claim were unlawful. China reacted negatively to the ruling, maintaining it was 'null and void'. For more see the ruling of the Permanent Court of Arbitration (2016).



Table 1: Exogenous and endogenous parameters which challenge and undermine COFDI soft power  
(Source: Author's own compilation)

Exogenous (between and within countries)	Endogenous (firm-level to country)
Western protectionism	Ballooning FDI and trade surplus
Undermining neoliberal democratic values	Chinese state-owned companies for control of crucial industrial sectors
The "information warfare" between US and China	Lack of transparency and reciprocity in market access
Cultural xenophobia and yellow peril fears	Fear of political leverage and revealing EU deficiencies
	<i>Pax Sinica</i> tool

Not less significant are the accusations of lack of transparency of Chinese official data (European Parliament 2018), saying that they are rather a reflection of the government's political targets than of the real economic situation. Transparency, alongside human rights and the established authoritarian communist party all undermine and are incompatible with the Western neoliberal democratic values, which are closely tied to soft power as a US based concept. As a result, an 'information warfare' is also taking place to destroy the image of China<sup>12</sup> i.e. its soft power, where media are the instrument for imposing these narratives and the pandemic is being politicized to serve as a power debate.

### Opportunities

The most obvious benefit some EU countries would get is the advantage of easy capital to sectors in need – which was the case in the aftermath of the Global Recession where COFDI was welcomed to alleviate the struggle. Another 2008 scenario of shifting the need for capital is also very likely in the post-pandemic period. Opportunities for COFDI soft power promotion (Table 2) are not only constrained to the financial side. Firm-specific advantages (FSA) of Chinese companies are already known in sectors such as telecommunications, artificial intelligence and renewable energy, even though COFDI is considered to mainly benefit China in innovation-related FSA through internationalization (He *et al.* 2019). Even though China is considered to benefits from EU's experience, know-how, competitiveness, pragmatic approach for integration and cohesion, the EU needs to realize that China is already a global technological powerhouse, thus their cooperation will provide mutual benefits.

<sup>12</sup> For illustration see Collinson (2020) and Korybko (2020).

**Table 2: Exogenous and endogenous opportunities which benefit and promote COFDI soft power (Source: Author's own compilation)**

Exogenous (between and within countries)	Endogenous (firm-level to country)
China's development model and decline of US	Post-pandemic need for capital
Brexit (EU pressure decreased)	Easy capital (low-cost financing)
BRI and 17+1 cooperation	Chinese leadership in AI, renewables and telecommunications
COVID19 China foreign aid	Spillovers to the European companies
EU-China multilateral cooperation	Glocalization of supply chains during COVID19 pandemics
Peaceful rise policy	Soft-balancing measure with China

Additionally, US leadership decline even before the pandemic leaves the door open to China who has the advantage over this position through the attractiveness of its development model. Moreover, the COVID19 pandemic has provided major setbacks (generating disruptive effects in the global economy affecting global trade routes and global value chains which are most of them tied back to China) where regionally localizing global value chains (glocalization) already takes place. The BRI and 17+1<sup>13</sup> established initiatives are as well an immediate opportunity for COFDI. Even though these projects trigger mixed feelings among EU member states (especially Germany and France are skeptical considering these projects erode EU's authority in Central and Eastern Europe) and the US (as a Chinese power demonstration), China's peaceful rise policy<sup>14</sup> coupled with multilateral approach<sup>15</sup> (which should include Western countries as equal founding partners) and a unified and common narrative toward EU member states for both of these and future projects, can improve EU's response thereby avoiding a 'lose-lose' final outcome (Gabusi 2019; Di Donato 2020). These projects are great avenue for further cooperation which spillovers to other domains, providing a partnership platform. Even when hegemonic aspirations are perceived, this kind of cooperation is encouraged as a soft-balancing measure against China. This strategy, realized through a combination of economic interests, security concerns and domestic motives for counterbalancing, is used to maintain policies for preserving security and avoiding conflict with the hegemon (Casarini 2009, 11-12).

<sup>13</sup>The project was established in 2012 in the aftermath of the global financial crisis as sub-regional Chinese diplomacy to assist South-East European countries and develop large-scale infrastructure projects through Chinese investments. It comprises 12 EU members and 5 Balkan countries. This project along with the BRI are constantly accused of undermining EU's cohesion and strengthening Chinese influence in this region through the foreign policy duality of China with the EU and concomitantly with its individual member states.

<sup>14</sup>This was an official policy under the leadership of Hu Jintao, which suggested that China's rise will not be a threat to peace and security, thereby avoiding confrontation during its emergence as a political, economic and military power.

<sup>15</sup> The EU and China are cooperating successfully in some multilateral formats, such as the United Nations Framework Convention on Climate Change (UNFCCC) regarding the uniform reporting rules to implement the Paris Agreement.

## Solutions

Optimization of COFDI soft power can happen under specific set of buffering strategies which redefine the unfavorable conditions (Table 3). Since favorable perceptions are important for soft power (Nye 2011), aspects with implicit zero-sum game assumptions, hegemonic and imperialistic aspirations are therefore damaging.


**Table 3: Exogenous and endogenous strategies for optimizing COFDI soft power (Source: Author's own compilation)**

Exogenous (between and within countries)	Endogenous (firm-level to country)
Quid pro quo strategy	COFDI diversification
Confucian humility in foreign policy	Philanthropic stewardship
Reassert open door, peaceful rise and multilateralism	Learning and cooperation engagements
COVID-19 public good provisions	COFDI and foreign aid without strings attached/leverage
Acceptance of divergent models	

To counter this, China needs to show that COFDI is in line with this peaceful rise policy, open door reciprocity, and a contribution to the European economy. Therefore, sacrifices need to be made, since an assertive approach provokes antagonism, triggering fear and defensiveness. Keeping the practiced Confucian humility, wisdom and softness in its foreign affairs avoids overly deterministic perceptions as power demonstration. Emphasizing multilateral approach in leveraging initiatives, initiation of learning, exchange and mutual cooperation will avoid perceptions of aggressiveness. Moreover, the EU should also accept that some assumptions about China maybe wrong. The Chinese people apparently trust their political institutions, which was exemplified on how the country dealt with the pandemics outbreak (Li 2020). The civil society in China is not the something apart from or opposite the state. The Western normative view is not a universal measure of a (nation) state, since China is a civilization state with many systems and the state is the trusted head of the family as the guardian of the Chinese civilization (Jacques 2012, 183). A philanthropic and sociotropic stewardship approach is therefore necessary, since the US rose in power only through providing global public goods. Realizing the soft power benefits COFDI might provide China should be a paramount practice, meaning more Greenfield investment and joint ventures, and less acquisitions in the high tech sector i.e. COFDI diversification in order to subside fears and zero-sum perceptions. The EU needs to realize the benefits of increased economic integration and competition with China as well as to overcome cultural differences through learning and cooperation engagements. Central to this relationship will be a quid pro quo strategy in leveraging political outcomes, meaning no conditioning and lobbying in individual EU member states should be practiced. Both should watch and try not to overstep the boundaries of a cooperative behavior and the EU avoids using the CAI as a tool to straitjacket investment relations with China.

## CONCLUSION

COFDI soft power potential lies in the possibilities to improve perceptions toward China, economic integration and asset-seeking, as well as political leverage in the host countries where its capacity is always contextually constrained. Nonetheless, COFDI is internally constrained by the negative perceptions of state-interventionism, lack of transparency and reciprocity, political leverage, affecting greater division among EU member states and liability of foreignness. The external constraints lie in China's lack of neoliberal democratic values, the ongoing trade war with the US and increased protectionism, as well as the information warfare the COVID19 pandemics which encourages global sinophobia.

Giving solutions to the negative influences of the internal and external contexts, involves reconciling the differences and managing the possible damages if the negative events take a swing. Greater responsibility and sociotropic engagement is required by both. China needs to realize that assertiveness creates antagonism and defensiveness, which leads toward increased protectionism. On the other side, the EU needs to realize that its unique voice should be more responsively used, by avoiding bandwagoning to the US policy and contributing to the yellow peril fears. A win-win solution is necessary as a soft power prerequisite. This includes re-examining EU's assumption on China's state-permeated market economy with one-party state authoritarian rule. Instead the EU should learn and accept the differences between the Chinese understanding of a nation state and the Western one. 

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# THE PROBLEM OF THE 'OLD' WORKING CLASS DEPRESSION ESPECIALLY THROUGH THE PRISM OF THE USA PRESIDENTIAL ELECTION IN 2016 AND 2020

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**Abstract:** *Digital economic and overall social transformation does not shape the future in an economic-sociological/socio-economic direction and with content that contributes as an important factor for raising the level of social integration and cohesion that is social capital. In reality, the economic-sociological/socio-economic problem of the 'old' working class, a working class that is not optimally involved in the structures of digital technology, economy and society, is imposed as a key problem. The most provocative expression of the significance of this class, in particular the American white working class, that 'old' white working class, is its impact on the outcome of the presidential election in the US in November 2016. The decisive factor for Trump's victory was the acquisition of an economically-sociologically/socially-economically disadvantaged or even depressed American white working class concentrated in several major states in the US West and the Midwest, which carry a large number of electors in the electoral college. Therefore, the primary goal of potential democratic presidential candidates is to take, that is, to restore this American white working class as its electorate. To this end, ideological and political variants of the concepts of democratic socialism (exclusively Bernie Sanders) and democratic capitalism (practically all other Democratic presidential candidates) are being created.*

**Keywords:** *Digital Transformation of the Economy and Society; 'Old' Working Class; Capital in the XXI Century; America First; Democratic Socialism, Democratic Capitalism, Progressive Capitalism*

## INTRODUCTION

The problem of unequal distribution of national wealth is essentially the most thorough problem of modern global society. It is the problem that in the most direct and drastic way produces the instability of modern global social relations. This problem, in the most flagrant way, produces and shapes the most difficult and the worst forms of global social conflicts. This problem is not very visible as a strictly economic problem, or as a problem that usually explains when it comes to the topic of the rapid and expansive economic development of global modern society.

This development of global social relations, beginning with the first industrial revolution and through the second and third industrial revolution, in this modern social reality is expressed as the beginning of the fourth industrial revolution: artificial intelligence as a direct product of the merging of information technology and biology, or, perhaps more precisely, as an input and intervention of information technology in biology. It is practically a new kind of biology-technical, informational-technological biology. The global gross domestic product has seen continuous growth as an undisputed historical process, economic social relations and overall social relations, according to the achievements of the third and fourth industrial revolution, are digitized through the whole of their structures. However, this vigorous development of the economic and the total social digitization did not go beyond the problem of unequal distribution of social wealth, thus producing severe consequences of fundamental conflict in the whole of the structures and constellations of power of the global modern society. The text that follows is only one of the numerous possible alternative examples of sociological, i.e. economic-sociological (economic sociology as a special sociology/special sociological dispensation) expression and perception of this problem, complemented by certain political, economic, i.e. international political-economic layers of his expression and perception.

### PIKETTY AND THE CAPITAL IN THE TWENTY-FIRST CENTURY: THE PROBLEM OF UNEQUAL DISTRIBUTION OF NATIONAL WEALTH

The problem of the inequality of the distribution of social wealth as a global problem, a very strong promotion, on undisputed scientific and research level, was experienced in 2013 when the extensive and complex scientific and research work was published for the first time in *Capital in the Twenty-First Century* (Piketty 2014), written almost fifteen years ago. This scientific-research work, although the scientific-theoretical and scientific-methodological is completely consistent in accordance with the postulates of scientific research and is not originally intended for the wider public, means it's not easy for reading and understand, along with its extensiveness, really succeeded in becoming a world-class bestseller, and his author really succeeded to acquire with world fame as an economic star, almost from the rank, for example, of Stiglitz or of Krugman. If we talk about the concrete theoretical,

ideological and ideological profiles of the author and the work, then their left determination and position are extremely obvious. Ultimately, one should not be surprised by the world glory of this book and its author, simply because the theme that is consistently scientific–research explored is the topic of the highest global social and economic rank. This is the topic that is the most sensitive topic and at the same times the most sensitive problem of modern capitalism and its planetary globalization: the inequality of the distribution of social wealth, the views of individual national levels and, of course, globally (Joyce 2008). Piketty used extensive, almost infinite statistical material that covers the last 250 years of the development of capitalism, practically starting from the time of the first industrial revolution.

Speaking in a way simplified and sublimely, it can be pointed out that basic conclusion of Piketty is the higher level of growth in the rate of return of the capital in relation to the level of the rate of economic growth. And, consistent in accordance with this conclusion, Piketty as the theoretical and ideological leftist, crystal clear and openly proposes and advocates the application of tax systems of progressive taxation, including a global progressive wealth tax.

A certain exception to the main and thorough conclusions of the Piketty on the inequality of the distribution of social wealth is the period between 1945 and 1975 and the years of the two world wars. These are periods when, according to Piketty based on the analysis of the rich empirical and statistical material, there is basically no noticeable increase in the socio-economic inequality between the strata that make up the structure of social stratification. If the conclusion on the reduction of inequality in the period 1945–75 was not made on the basis of an analysis of rich empirical material, then Piketty could be criticized that as a Keynesian and a leftist is eventually theoretical and conceptual, even ideological, subjective and biased. The period 1945–75 is in reality and is essentially a period when the Keynesian economy, the Keynesian state interventionism, the Keynesian macroeconomic concept, the Keynesian macroeconomic models set forth on the Keynesian concept and the welfare state reached its theoretical, conceptual, ideological, political and political-practical peak (Phelps 2006). Then comes the period of the macroeconomic concept of monetary neo-liberalism, which is theoretical, conceptual, ideological-political and political-practically is an alternative, competitive and conflicting with Keynesianism. At the end of the 1970s and early 1980s, practically the political operating models of Thatcherism and Reaganomics were established, when the decade of marked economic growth was established and inaugurated (Kotz 2007), but also a period of growth of socio-economic inequalities, followed by clear and striking cycles of global financial and economic crises, with a culmination in the summer of 2008 when the bubble of the real estate market in the United States was definitely burst (McCuistion and Grantham 2016). At this place in the text the issue of winners and in the processes of unequal distribution of national wealth is strongly raised.

This issue is primarily relevant for the US economy and American society in general, especially since the US economy, at least to these historical and civilizational moments, is or, to put it more precisely, was the most developed and largest economy. The answer to this

issue is generally revealed by Piketty through its substantial and general empirical-research conclusion: the rate of return on capital is higher than the rate of economic growth in the period of capitalism as a social formation, that is, as a social system, with the exception of the period from 1945 to 1975. In reality, this is the period of functioning of a true and efficient welfare state, that is, the state of well-being, and this is a period of functional state interventionism, as previously mentioned in this text. In this context, in a specific way and through an investigation by Anne Case and Angus Deaton (Deaton is the winner of the Nobel Economics Prize for 2015), we will reach the American white working class, that is, the low middle American class, as the greatest loser in the processes of inequitable distribution of social wealth, especially in economic terms a crisis, which was the global financial and economic crisis that began to be extremely manifest in the summer of 2008. In this context and in this place, it must be very stressed that the basic and essential problem is not the problem of established and long-lasting poverty, but rather the problem of impoverishment of the middle class, that is, the low middle class, in the reality of the most productive working class.

#### THE SOCIAL AND ECONOMIC IMPOVERISHMENT OF THE AMERICAN WHITE WORKING CLASS AND TRUMP'S VICTORY

It is not at all disputable that the dynamics and structure of mortality by its various characteristics essentially represents the strongest indicator in relation to the ultimate, most severe, most dramatic consequences of the processes of social and economic depression/processes of impoverishment on the physical and psychological integrity of the person. Exactly from this conclusion, both Anne Case and Angus Deaton (Case and Deaton, 2015) begin to explore the dynamics and structures of mortality (and) in the United States, with a special emphasis on determining the correlation between the variable of socio-economic impoverishment (with some emphasis on the great financial and economic crisis that escalated in the summer of 2008), as an independent variable, and the consequences of this variable on the mortality variable (its dynamics and structures) as a dependent variable.

The results and conclusions of this research, in particular the focus of the concrete socio-economic layer, or the socio-economic group, which in a specific and cruel direct way and level is the biggest loser in the United States in the crisis, throws in the strongest possible way a devastating light and an explanation for Trump's presidential election in 2016 in the United States. It is most pertinent to point out that the Trump elections won the bliss of victory in several major states (states that carry a large number of electors, who actually elect the president) in the US West and the Midwest where the American white working class is concentrated. So, that social-economic stratum/group/class, which is the biggest loser of the crisis in 2008 in accordance with the results and findings of the aforementioned research by Anne Case and Angus Deaton. The social-economic stratum/group/class that remained on the margins of the digital transformation of the American economy and society.

The social-economic stratum/group/class that encompasses the classical/old industrial class i.e. does not in any way include the stratum/group/class of IT workers. So it is precisely the American economic-sociological/socio-economic space where the stratum/group/class of labor, that is, a large part of it, at least (primarily material and financial), has felt the benefits of digitizing of the US economy and, in general, the American society. Trump won the election because he won the previous bastion of the Democratic Party, of course, as an immediate and crucial result of the corresponding economic-social/socio-economic ideological and political determinations in the election campaign. This is a conclusion that imperatively imposes completely scientific-theoretical and scientific-methodological serious and credible researches-sociological, political, economic, etc. So, Case and Deaton investigated the mortality rate in the United States and in their text specifically highlighted the significant increase in mortality in the period from 1999 to 2013, including the noticeable increase in mortality among the American white working class in the short period after the summer of 2008, when the financial and economic crisis triggered by the bursting of the bubble in the United States real estate market was clearly manifested. It is very interesting this 1999 from one particular and very relevant aspect. Namely, in that year the Gramm-Leach-Bliley act was adopted in Congress, with which the process of full derogation of the Glass-Steagall act from 1933, which introduced serious regulation of the financial markets in the United States, was definitely completed. It was a time when then Federal Reserve Chairman Alan Greenspan argued that the role of financial markets and in all markets at all was only to remove the remnants of those marketers who lost their market battle and free the market arena for new market wars in which there will be new market casualties. With the Gramm-Leach-Bliley Act, primary financial markets are left virtually unregulated, in addition to the factual unregulated of the secondary financial markets/financial derivatives markets. The 2008 crisis essentially occurred precisely because of this lack of regulation. That's why Congress passed the Dodd-Frank Act/Dood-Frank Wall Street and Consumer Protection Act in 2010 and Reform Volcker Rule in 2014 introducing some regulation of the financial markets, indeed primarily in the primary financial markets.

Case and Deaton do not disclose this increase in mortality to any other socio-economic stratum/group/class in the United States, and this is why they put this knowledge in the title of the aforementioned text deriving from their research. This socio-economic stratum/group/class, the American white working class, is that stratum/group/class that really had what to lose and it lost it as a consequence of the crisis, that is, that is the social-economic stratum/group/class in which a strikingly reductive, even possibly depressing, social-economic dynamics is noted. Surely the higher social-economic strata/groups/class have something to lose in the socio-economic crisis, in reality they have much more material-economic and in general certain status resources that they can to lose in socio-economic crisis situations, but their total social power (social-economic, political, etc.) allows them to possess and use some kind of immunity in such social and economic circumstances, faced with the negative challenges on their socio-economic status.

The authors' knowledge of age, education, income and overall living well-being as highly relevant factors in increasing the mortality rate of the American white working class are also very important, of course, along with the growth in the rate of social-deviant behavior and, especially with the rise in disease rates. It is very clear; the rise in disease and mortality rates among white Americans, primarily men who are with middle-aged, who have secondary education, who have average income and who have in general an average social well-being. And all of this happens in the years that preceded the spectacular manifestation of the financial and economic crisis, and especially in the years after the crackdown on the real estate market bubble in the United States and the bursting of the crisis. It is very important to emphasize the authors' empirical knowledge of the increase in mortality rates, as well as diseases, in this category of Americans (white, men, in middle-aged, with secondary education, with medium income and with average social well-being) in social conditions when there has been a trend from more decades of decline in the general rate of diseases and mortality. So, in conditions of general decline the disease and mortality rates, even in the medical-epidemiologically most vulnerable categories of people—the in children and the elderly. The socio-economic crises, especially focused through the prism of the inequality distribution of the socio-economic consequences of those crises on divided categories of citizens, i.e. on individual social-economic strata/groups/classes, at least in the case of the United States and the US economy as the most developed economy, they are magnetically manifested with the most severe negative consequences for the above-mentioned and emphasized stratum/group/class of the overall social stratification of the American society.

So, Trump won the 2016 election thanks to victories in several major states that concentrate the American white working class/American white low-middle class, a class that has really remained on the margin of digital transformation, the class with the most pronounced reduction in its socio-economic status and well-being, on the one hand, and at the same time a class that was one of the main target groups of Trump's pre-election assignments and promises that through the overall presidential policies he will extremely seriously protect (and) their interests, on the other hand (Smeeding 2010). It is quite obvious that the rapidly declining level of socio-economic well-being of this American low-middle class as soon as its members have decided to change their traditional electoral ideological-political and political-party determination (Hudson 2017). At this place, ultimately, it is practically unnecessary to enter into an analysis and discussion of whether this classical/old industrial middle/low-middle class from the US West and the Midwest electives to choose and accept Trump's promises given in the pre-election campaign that will protect her interests as a conscious social-economic and ideological-political relation or as a kind of 'lumpen' initiation to the strong and correct propaganda-political pre-election rhetoric. Rhetoric whose essence was Trump's promise that he will ultimately consistently and resolutely protect the jobs and the overall well-being of the classical industrial middle class as the basic and essential determination and direction of his socio-economic policies.



The current situation of the US economy and, in particular the problem of socio-economic inequality, is very vividly testified (and) by the IMF in its annual report. The fund concludes that the US economy in 2019 is characterized by record low unemployment, wage growth and steady economic growth. But, at the same time, the Fund warns that poor household income growth has been noted, that there is a large number of poor people and that there are significant problems in the education system. The fundamental problem of the economy is the high level of inequality in the distribution of national wealth. Thus, for example, the average American household has only 2.2% more income compared to the late 1990s, while in the same period US GDP recorded a cumulative growth of 23%. The poverty rate, however, remains close to the level at the beginning of the last financial crisis—at present, nearly 45 million Americans are poor, or about 13 percent of the population. The IMF also reports that the US high public debt, which reaches 78 percent of GDP, is not sustainable. The IMF warns that life expectancy in the United States is significantly shorter than in other G7 countries, primarily due to excessive drug consumption and suicides. The report also refers to the education system, noting that despite serious allocations for education, the results are still disappointing. The IMF proposes more possible solutions to the listed problems, including introducing paid parental leave from work and increasing the minimum wage and social assistance.<sup>1</sup>

## DEMOCRATIC SOCIALISM, DEMOCRATIC CAPITALISM AND PROGRESSIVE CAPITALISM

Of course, Democrats in the United States will have to find a theoretical, ideological and political platform to oppose Trump's alliance with the American white working class/white low-middle American class. Trump's election broke down the belief, after Obama's two victories, that no one could win the US presidential election without the votes of African Americans and Hispanics, just like without the votes of the LGBTIQ community. In this sense it was even believed that the support of the US lobby in the United States was not needed. Thus, during Obama's presidency, US and Israeli relations dropped to a low level that no one could have guessed, along with Obama's undisguised hatred of Netanyahu. Democrats must theoretically, ideologically and politically respond to Trump if they want to achieve the goal-preventing Trump's reelection. Democrats must restore electoral confidence in the major states of the US West and the Midwest, where the old/classical (white) American working class/low-middle class is concentrated. It is the class that does not possess the socio-economic position of the digital/IT working class, that is, it is the class that is the biggest social-economic loser, or the smallest social-economic winner, anyway, in the end, in the

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<sup>1</sup>United States of America: Staff Concluding Statement of the 2019 Article IV Mission, IMF, [www.imf.org/en/News/Articles/2019/06/06/mcs060619-united-states-staff-concluding-statement-of-the-2019-article-iv-mission](https://www.imf.org/en/News/Articles/2019/06/06/mcs060619-united-states-staff-concluding-statement-of-the-2019-article-iv-mission) (accessed 12.06.2019).



period of digital transformation of American economy and society, especially in the period after 2008, when the great financial and economic crisis began to manifest itself clearly. That's why Democrats on theoretical, ideological and political level are already beginning to elaborate on Democratic Socialism (in reality only Bernie Sanders) and Democratic capitalism (virtually all Democratic candidates for winning the presidential nomination).

As an illustration of this theoretical, ideological and political positioning of the Democrats, we will stick to the Nobel laureate economics from 2001, Joseph Stiglitz, who in one of his most recent texts, with an extremely indicative and significant title 'After Neoliberalism', explains the concept of Progressive Capitalism (Stiglitz 2019). It is quite clear that the concept of Stiglitz is in a positive correlation with the concepts of democratic socialism and democratic capitalism, whereas however, he does not determine/not dare talk about (democratic) socialism, but (democratic) capitalism. At the same time, Stiglitz clearly puts his concept in a positive context with the concept and determination of the Green New Deal, sponsored by Alexandria Ocasio-Cortez and Ed Markey, representative and senator of the 116th Congress of the United States. Stiglitz, not only because of the creation of the concept of progressive capitalism, but on the basis of his entire professional and scientific work so far, has conceptually, theoretically and ideologically has been built and promoted as a convinced and very hard Keynesian and leftist. The indication and significance of the title of the text and the concept of Stiglitz clearly show that Stiglitz has a completely negative attitude to the concept, ideologies and policies of neoliberalism. Stiglitz unequivocally argues that today the concept of neo-liberalism is dysfunctional and overcome, simply because the period from the past 40 years of conceptual, ideological and political supremacy to the concept of neo-liberalism has crystal clearly demonstrated that this concept is not the concept that contributes most to human well-being. Stiglitz is convinced that human well-being is the basic problem and the essential issue facing mankind in this present time of human historical and civilizational development. Stiglitz for the concept, ideologies and policies of neoliberalism, which is thoroughly determined through the separate elements of the reduction of taxes for the rich, deregulation of the labor and product markets, financialization and globalization, speaks precisely as an experiment/neoliberal experiment, which, claims, have shown spectacular failure. Stiglitz's main indicator and argument for this claim is that the global economic growth in the past 40 years is lower than it was during the first 25 years after the end of the Second World War. Stiglitz, as the only real negation and alternative to the concept of neo-liberalism, imposes the concept of Progressive Capitalism, because he, from all the concepts offered as an alternative to neoliberalism, including those who build the position of neoliberalism with a human face (the concepts and policies of Clinton and Blair), the only one truly rejects the basic postulates of neoliberalism. Stiglitz defines four fundamental elements of the concept of Progressive Capitalism, i.e. four priorities, as it is more precisely named: restoring the balance between the market, the state and civil society (the state has the duty to regulate markets through rules relating to ecology, health and safety employment, as well as to invest in fundamental scientific research,


technologies, education and health care), markets must be subject to the rule of law and democratic control (if it is not so then individuals will be enriched by exploiting other individuals and through rents, and not through authentic creativity), the problem of increasing concentration of market power must be resolved (the companies that are dominant in the markets must not use the rents and the collapse of the power of the workers to negotiate with employers for enrichment at the expense of smaller companies and at the expense of the employees, and that is why they are increasing social inequalities and economic growth rates are reduced) and must be cut the link between economic power and political influence (their mutual strengthening and self-reproduction must be interrupted, especially in countries such as the US in which donation of election campaigns is not limited, especially since the systems of mutual control of the types of power are destroyed).

In this context, Stiglitz very strongly emphasizes the statement, which is essential for the topic of this text, that economies and societies with smaller inequalities are more successful. Therefore, the primary and most important task must be to stop the growth of social inequalities and seriously reduce them. In order to realize this task, primarily and urgently, strictly Keynesian, the power of the markets must be reduced and, accordingly, the powers of the state regulatory instruments and mechanisms must be increased.

## CONCLUSION

The burgeoning technical and technological development, the digitalization of the whole of the economic and the overall social relations (indeed unevenly in relation to the various structures of those relations), the growth of the gross domestic product does not exceed, nor relativize and reduce, the problem of unequal distribution of social wealth. This problem is in any case a wider systemic economic and social problem. And that is the problem that fundamental and substantive, explicitly through the ways, methods, directions and contents of its overcoming, to solve it, will most directly create and shape the global social future. It is the picture, it is the perspective that is drawn, which are created from a broader and deeper point of view. So, not from a strictly technical-technological, nor from an economic point of view, but from a sociological point of view, that is, from the point of view of economic sociology as a special sociological discipline. In this context, the total socially potentially and latently conflicting impact of the social/socio-economic status of the 'old' working class must be emphasized in particular.

It is that working class which, in a certain way as inadequate and marginal, is not really covered by the main processes of digital transformation of the economic and the overall social relations. This working class in reality is the class/social stratum of the whole of social stratification of modern society, which as a rule, social reality shows and argues it, is the greatest victim of all contemporary economic/socio-economic crises. The 'old' working class is that class/social layer that in the most direct and decisive way has decided the last presidential election in the US, those in November 2016, exactly in the state, in the economy

and in the society that, at least until now, were champions and drivers the processes of digital transformation of the economic and the overall social relations. Therefore, the presidential pre-election and election campaign for the elections to be held in November 2020 will be a direct and a major battle for the votes of the 'old' (and more specifically, white) American working class. 

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# TURBULENCE ON THE GLOBAL ECONOMY INFLUENCED BY ARTIFICIAL INTELLIGENCE AND FOREIGN POLICY INEFFICIENCIES

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**Abstract:** *It is said that Data and Information are the new oil. One, who handles the data, handles the emerging future of the global economy. Complex algorithms and intelligence-based filter programs are utilized to manage, store, handle, and maneuver vast amounts of data for the fulfillment of specific purposes. This paper seeks to find the bridge between artificial intelligence and its impact on international policy implementation in the light of geopolitical influence, the global economy, and the future of labor markets. We hypothesize that the distortion in the labor markets caused by artificial intelligence can be mitigated by a collaborative international foreign policy on the deployment of AI in the industrial circles. We, in this paper, then proceed to propose a disposition forth essentials of AI-based foreign policy and implementation, while asking questions such as: could AI become the real 'invisible hand' discussed by economists?*

**Keywords:** *Artificial Intelligence; Foreign Policy; Invisible Hand; Global Economy; Machine Learning Algorithm; Labor Markets*

## INTRODUCTION

Artificial intelligence is also known as Machine Intelligence as it is based on complex computer algorithms. It can be defined as any mechanism or phenomenon that perceives its environment and takes actions that maximize its chance of successfully achieving its goals (Poole; Mackworth and Goebel 1998). The stimulus of information is called Data. The role of the internet is growing exponentially in both governmental and non-governmental organizations. Artificial intelligence has a wide range of applicability in Governmental ministries. AI can be perceived as anon-biological form of intelligence in this era; nevertheless, there could be biologically induced AI in the future with advancement in quantum computing and gene editing technology. Artificial intelligence has contributed in every sphere of human life right from the home appliances to transportation by introducing self-driving cars, etc.

The application of robotics on the assembly line of many industrial complexes has also been a plus for mankind in expediting manufacturing processes. The arena of military strategies and defense forces are also enshrined with modern compact artificial intelligence-based drones that fly, combat and refill without any human effort, although there are international regulations preventing the use of autonomous weapons. Currently many military organizations along with extremist groups are using AI-based drones (Washington Post, 2017). This calls for tighter international regulation on the use of automatic weapons and the use of drones as a whole. AI will open the frontiers of human understanding at both macro and micro levels. It will enhance our rationality and help us cope with problems more effectively. Artificial intelligence also reshapes all our economic, political and social preferences; it is a powerful tool that can manipulate human behavior in most unpredicted ways. Though the development of artificial intelligence is at infancy, we cannot ignore the potentiality of threat it may pose financially, politically, economically and culturally (the extent of potential threat isn't the focus of this paper). Governments must regulate and follow up on research and development made in AI and respond in the best possible way to ensure maximization of utility to minimize disutility.

Artificial intelligence is widely used in both external and internal government affairs such as improved public management, urban planning, banking, security, transportation and so on. The design, building, use, and evaluation of algorithms and computational techniques is improving at an alarming rate (Desouza 2018). Data is a major entity in the era of artificial intelligence; therefore, the more data governments and public institutions manage to integrate into their systems, the higher the capabilities of machine learning to make decisions based on this data will be (Coglianese and Lehr 2018). The authenticity of data is directly proportional to the outcome of the process. This paper intends to provide the detailed effects of artificial intelligence over governments and on international policy implementation; also, to suggest an outline of solutions for the emerging complexities in foreign policy implementation with the advent of AI. Every implementation action can influence policy,



resources, and objectives as the process evolves (McLaughlin, 1987). This paper does not intend to counter all the claims that may arise after the advent of artificial intelligence but limits its scope to matters concerned with AI and public policy and the implementation of international policy.

We in this paper used a qualitative conceptual analysis in diving into the issues surrounding artificial intelligence and foreign policy. We did cross referencing of documentation regarding both AI, international law, international economic law, foreign policy, globalization, machine learning and sought into both the anthological and contemporary phenomena emerging in the relationship among AI, foreign policy and labor markets.

## ARTIFICIAL INTELLIGENCE AND GOVERNMENTS

The development of artificial intelligence can be traced back into the XX century. In the Second World War the U.S Government was actively using artificial intelligence-based programs in marine aircrafts (Sloane 1991) though they were not as sophisticated as the modern appliances of artificial intelligence. Recent studies show that more and more human behavior can be predicated by artificial intelligence like the Google Maps suggestions of the fastest route based on data of personal Smartphone is a notable example of artificial intelligence in our daily lives. Kouziokas confers crime risk prediction as a factor that contributes to safer travel in urban areas using artificial neural networks - an example of AI (Kouziokas 2017). The algorithms will calculate high crime rate areas using local police databases; the data is organized into cluster and precisely determine the risk factor of crime in a certain area and time of a metro pole (this approach however comes with discrimination issues which will not be discussed in this paper). Birkland considers the public policy-cycle as an appropriate framework for understanding the complexity of the public decision-making processes, as well as the actors involved in such processes. Thus, activities, actors and drivers of public policy can be considered within this framework (Birkland 2015). In terms of foreign policy, artificial intelligence has opened new vistas of science and technology but many of the existing traditional diplomacy can be adapted into this new field while planning for the significant changes in the coming time. The potential of artificial intelligence to bring change in this world has initiated a competition among different governments of states to gain the strategic advantage. China's national AI strategy shows how seriously governments take this technology; China is placing major bets on the development of artificial intelligence and Robotics. Russian President Vladimir Putin stated bluntly that the country which gains an edge in AI will be the ruler of the world (The Economist 2017); this shows how heated the race among states to gain the maximum stake in AI is.

There are preventive measures that ought to be taken before AI fully indulges in human lives. The steps taken are discussed under the two different approaches; one is aggressive in nature while the other can be taken at a pragmatic level. Governments should

primarily focus on assets and resources while keeping in mind the more significant planning of the near future events. The pragmatic approach of artificial intelligence does not preclude thinking about decisive changes that the technological invention might require for our foreign policy institutions. The methodology of policy making should ultimately be shaped to include a wide range of AI inspired applications so as to create a resonating effect on the set of opportunities and benefits that could resultantly come from artificial intelligence.

## AI POLICY PROPOSITIONS AND REGULATIONS

'Lenient' policies from governments regarding the development and use of artificial intelligence would be a key factor for the growth of AI. Innovation policies should be permission less and swift if we want to capture massive breakthroughs in artificial intelligence and robotics. It is evident that the implementation of lenient policies helped spur the digital revolution in the advent of the internet. The advancement of AI is in a great way highly dependent on similar or even more lenient policies (Booker and Fischer 2015). Firstly, governments and policy makers must distinguish the existing areas of artificial intelligence on the basis of their utility and development techniques so that they can take the appropriate steps. For example, the regulations and preventive steps for artificial intelligence that intends to address experimental medical applications should not inadvertently be applied to social media applications of artificial intelligence because of broad or improper wording and lack of definite segregation between developmental projects.

On the other hand, some developmental programs of AI could be exempted from policy making barriers and regulations due to their utilities and sensitivities; and the kind of AI which may pose direct risk to public safety or health could be examined to include the kind of oversight regulations that are appropriate to minimize such risks. Secondly, governments and policy makers should figure out all the potential threats and concerns in a productive form to avoid the worst-case scenarios while deciding about the fate of the technological advancement of artificial intelligence.

Governments and policy makers have the authority and responsibility to indulge an excessive approach while engineering the rules and regulations for artificial intelligence (Atkinson 2016). Finally, the lesson of the contemporary policy approaches to the internet in the 1990s is a sufficient guidebook for the regulations of artificial intelligence. Policymakers in both of the United States and European Union follow finical models. The United States provides a clear space for experimentation and commercialization thereby inducing collaboration and growth of the internet and industry whereas the European Union appears to be inadvertently quashing the industry before it has the chance to develop making it dull in terms of utility. General openness and lenient policies towards innovation are crucial because they provide ample breathing space for the nourishment of science and technological advancement.

## FOUNDATIONS OF AI-BASED FOREIGN POLICY

Foreign policy makers and governments need to adopt a swifter approach in terms of problem solving and work ambitiously to integrate technological knowledge into our existing conventional work load fashion. It would require substantial reorganization of institutes. The pragmatic strategy is to claim the limits of the work and benchmark that was achieved in the digital era of the internet. For example: small offices might be enough to operate cyber networks but might not be sufficient to deliver the same mark of effective management and development when it comes to artificial intelligence. If we prioritize the development of artificial intelligence and new technologies, we must shift the focus or de-prioritize the other existential issues with decreasing relevance.

The second lesson for effective enforcement of artificial intelligence in foreign policy agenda is the swift and effective response of private companies, research institutes and civil societies. For that purpose, an effective knowledge of data is required to identify the most useful interventions and to overcome the effect of double occurrence by establishing a series of collaborations we draw in our existing figures. This can be illustrated from the example which AI policy issues are corresponding in terms of the arms control efforts of the cold war and the period prior to cold war (Allen & Chan 2017).

The third lesson motivates us to adopt a problem-solving attitude while handling our foreign policy response; this actually means to avoid the bureaucratic glitches in handling specific diplomatic issues. The development of artificial intelligence is faster beyond the response rate of existing bureaucratic framework of the world as it requires conscious effort in adopting to work structures. The existing problem-solving process is axiomatic and the 'mighty' software industry that is responsible for the handling of the development of the technology of artificial intelligence and robotics and many of its features can be usefully applied in policy development.

The last lesson is that humans should be ready for the persisting challenges and difficulties which may arise during the process; these challenges can be seen to be mainly more consent with Human Resource Management. The man power skilled to work with artificial intelligence is required to meet the needs of our diplomatic practices while the conventional process of hiring and recruiting suitable candidates for the jobs in ministries of foreign affairs needs to be in tandem with the standard operations and procedure of Governments; young technology experts should be hired and involved in the crucial affairs of ministries. The challenge of finding, selecting and recruiting the artificial intelligence experts who are at the same time skilled in social science and law and then integrating them into the required posts in the required offices and embassies is not easy task. The best and the most suitable candidates for these posts may not come through the conventional mode of foreign and civil service offices and it may require a separate aptitude test of different qualities for their enrollment.

## ESSENTIALS OF AI-BASED FOREIGN POLICY AND THE GLOBAL ECONOMY

The AI's advancement has also brought about some managerial as well as social challenges in international relations. The essentials of foreign policy required for harmonious synchronization of artificial intelligence into foreign policy rules are discussed below. The first and foremost priority of foreign ministries and offices is to calculate the magnitude of the major issues that would be directly caused by the development of artificial intelligence. We cannot shape the future dilemma of artificial intelligence without setting the preferences of our research. The stakes of this technology are well understood by the nations of the states as it can be concluded from the fact that the recently published 'New Generation of Artificial Intelligence Development Plan' shows China expects to generate \$59 billion in artificial intelligence-based technology (Webster; Creemers; Triolo and Kania 2017).


The Government of South Korea initiated an investment of \$863 million in artificial-intelligence technology (Nature 2016) and the many governments have allocated huge funds for the development and research of AI (Helmholtz Association 2020). This paper asserts that initiatives by the world governments is fueling the unending development of the technology under discussion and shows that policy making plays a vital role in shaping the advancement of technology in AI. However, too much attention on AI would suffocate many other areas of research which is detrimental to the development of Agriculture, Materials Science, Biology, Pharmacy etc. With diplomacy as a tool of effective communication, the media and civil societies as sources of public narrative in a society, the awareness regarding the advancement of artificial intelligence should be a major part of a new communication. The artificial intelligence has seen an acceleration of advances in the field of medicine, health, economics, finance, security and energy (Robertson 2017). These advancements were possible through Machine Learning and Data analysis obtained through the daily activities of societies (there are privacy issues which will not be discussed in this paper). Agreements are mutually consensus hence the world must engage in a productive dialogue about the future of the development of artificial intelligence since the process of dialogue will suggest new strategic challenges that would put states and international organizations onto the same page; thereby easing the strain in international relations caused by the transfer of technology. This will enhance the development of regulatory measures in governing the internet, cyber security and the digital economy. The path of development of artificial intelligence begins with the new standards of confidence building between the international policies in the groups of multilateral experts (United Nations 2016).

These series of meetings would be the foundation of international law that governs the applications of artificial intelligence. Many of the short-term and long-term agreements would be signed to minimize the impact of artificial intelligence in the labor markets because the introduction of AI and highly advanced robots will render a huge number of workers jobless while introducing new jobs (McKinsey Global Institute 2017). This paper disagrees with Sachs et al that both the human capital and labor workers would devalue and that only

highly skilled artificial intelligence experts would retrieve their value (Sachs 2017). Government regulation is required to make sure a gradual integration of AI is executed in order to reduce the amount of turbulence caused by AI in distorting the labor markets. Foreign offices pose as the leading figures by collaborating between all the stakeholders from different regions and sectors to sort out all the challenges and build a framework to avail all the opportunities of artificial intelligence. It would be recalled that the initial conferences titled on the freedom and free use of internet resulted in strengthening the scope of the right based policy agenda. Similar agenda to promote consumer rights should be initiated. This work can be based on the footprints of public diplomacy. Introduction of a competent global body should be prioritized in advocating the narrative of global civil societies regarding the implication of the development of artificial intelligence and international policy making. The majority of the general public has had the stuff of science fiction movies in their minds regarding the implications of artificial intelligence featuring robotic killings and algorithms empowered to deliver lethal forces. In Argentina on the date of July 28, 2015, an open letter was written to the Joint conference on the development of robotics and artificial intelligence for imposing a ban on autonomous weapons (IJCAI 2015); that letter was signed by more than 3000 scientist and artificial intelligence researchers (Independent 2015). These narrative platforms also address public grievances and assist foreign bodies in policy implementation. Foreign offices and embassies should assist in integrating the available information and form a network to collaborate and share information between the different segments of their offices. Major breakthroughs in the development of artificial intelligence must be reported on priority basis and the developmental programs of artificial intelligence must be monitored. The head of the missions and project directors should be engaged with their delegations. All the opportunities and threats must be equally inspected and shared. Facial recognition and image processing where data is trained based on algorithms on the principles of information gathering (McKinsey Global Institute 2017) has been a race in China among both top and upcoming tech giants such as Baidu, Tencent, and Sensetime, etc. (Chin and Lin 2017). This is a two-edged sword, however, information sharing helps to foster cooperation thereby optimizing economic development. It can be inferred from our research that the collusion of artificial intelligence and the implementation of foreign policy is quite underdeveloped. Much research is required in artificial intelligence to develop applications usable in foreign policy implementation, whereas much research is needed in the area of international relations and international law in showing how the inevitable advancement of AI can be regulated without impeding on its progress. The significance of diplomacy and statecraft in terms of artificial intelligence is scarce because there is the lack of sufficient number of AI experts with interests and opportunities in taking key positions in foreign ministries of governments. Also, there are fewer international relations and law experts with in depth training in computer science and AI. Disparateness between technology and the social sciences causes discomfiture in implementing foreign policies relating to AI.

This paper has discussed a brief analysis and presented guidelines on making diplomatic practices relating to artificial intelligence. As we have seen, there are institutes operating under constraints whether being political, bureaucratic, or financial constraints; this paper has given a pragmatic view of the implementation of foreign policy on artificial intelligence such as the utilization of the existing tools of diplomacy featuring fraternity of systematic adoptions. With a huge chunk of the global economy moving towards digitization, 'cyber foreign policy' should be given prime attention and discussed among both governmental and non-governmental organizations especially in the area of AI; also, consumer right protection in digital transactions should be imperative to policy makers.

## CONCLUSION

As shown in the previous chapters of this paper, advancement in AI and robotics is frustrating the usability of a portion of the labor force as well as not replacing but creating new jobs. The turbulence of this phenomenon causes distortion in the labor markets thereby shifting the supply and demand curves of labor. The global economy, geopolitics and international relations are affected dramatically as we can see; the trade war between China and the USA is partly based on the shifting of labor from the later to the former, due to the fact that most jobs in the USA, the EU and Japan have shifted from intensive labor to service based and technology based which has boosted the manufacturing sector in China. Advancement in AI has caused many factories to replace repetitive jobs in the production line with automation. Most of these factory workers have moved onto new jobs created by Uber, Didi, Meituan and many others. While others are video streaming and selling products on Tiktok. These are examples that show that new jobs are created while others are being lost. During the industrial revolution, horse groomers probably were worried about losing their jobs while new jobs like mechanics were being created. It is a 'hand-go-hand-come' tale. Artificial intelligence could create a new political revolution where everything is governed by itself through a real 'invisible hand'. It could (if not become) perform the actions of the invisible hand which economists have theorized for decades. Lenient policies from governments regarding the development and use of artificial intelligence would be a key factor for the growth of AI. Also, governments and educational institutions should come up with programs that train a breed of technology, AI, law, international relations and economics hybrids of experts to be given key policymaking roles in multi-national endeavors. 



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## THE ALBANIAN QUESTION AT THE PARIS PEACE CONFERENCE DURING 1919-1920

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**Abstract:** *This paper aims to bring to the public one of the most important moments in the history of modern times of Albania. After the Albanian independence on 28 November 1912 and international recognition of Albanian state on 29 July 1913, in 1919-1920, many national and international events unraveled which initially posed a real danger for Albania to become an independent state. The Paris Peace Conference, organized after the First World War by the Great Powers which win the war, and in which 27 winning states took part, became the real world center of that time. The Albanian point of view was headed directly at this Conference, with the hope to gain its independence and to win the right of self determination for its people. The main issues of the Conference were: border correction, especially in the southern part of Albania, relations between the Balkan states regarding Albania, the position of Italy, Kingdom of Serbs, Croats and Slovenes, and the position of Greece over Albania, and the real threat of secret pact during the First World War and the new role of American President, Woodrow Wilson. This paper also aims to bring the attitude of the Albanian delegation at the Paris Peace Conference and the position of Italy, France, Great Britain and Greece.*

**Keywords:** *Albania; France; Italy; Greece; United States; Kingdom of Serbs, Croats and Slovenes, Great Britain; Paris Conference; Delegation*

### INTRODUCTION

After Durrës Congress, at the beginning of 1919, the attention of Albanian people was focused on Paris. The Peace Conference started the works here officially on 18 January, organized by the five war winning Big Powers, Great Britain, France, Italy, USA and Japan. As usually, in such cases, the winners would dictate peace conditions to the defeated. In the First World War, Albania did not take side, neither with the winners, nor with the defeated.

However, it was invaded by several military forces of some winning powers which aimed at violating its territorial integrity, and there was a risk of nullifying the independence achieved in 1913. Meanwhile, Albanian representatives who went to Paris required from the Conference to review the past injustices, hoping that the self-determination principle would be respected. These hopes were grounded in particular on the participation of American representatives headed by President Woodrow Wilson in the conference. The USA was not a signatory to any secret treaties and they pronounced openly that peace would be established not on the basis of such treaties, but by respecting fair principles. In addition, USA formulated then its own attitude for the postwar regulation by stressing that "they would keep the position of arbitrator and they would act according to American justice tradition and magnanimity" (Frus 1919, 47).

### THE POSITION OF GREECE

The Peace Conference did not take into consideration the Albanian delegation demands. Since the beginning, it started to review the claims of Greek government submitted in writing and orally by E. Venizelos. The government of Athens required the annexation of Korçë and Gjirokastër (Clogg 2004, 43). The Greek Prime Minister appeared before the Conference with the invented and no old-fashioned thesis according to which the Christian (Orthodox) Albanians that comprised half of the inhabitants of these regions felt themselves as Greeks. E. Venizelos referred also to London Treaty of April 1915, which charged Italy not to oppose the annexation of southern Albania by Greece if this should be required by other Treaty signatories, Great Britain and France (the fourth signatory, the tsarist government of Russia, toppled over by October revolution did not take part in the Conference) and if Italy would take for itself what this Treaty provided for. For this reason, the Greek government representative did not pronounce against the claims of Italy for Albania, but for the division of Albania with the neighbor across the Adriatic.

### THE POSITION OF SERBIA

Another attitude was held by representatives of Kingdom of Serbs, Croats and Slovenes or Yugoslavia (It was renamed as Yugoslavia in 1929 after the 9 January dictatorship, at the point of the Paris Peace Conference it was still the Kingdom of SCS), which did not express any territorial demands toward Albania directly. The Kingdom of Serbs, Croats and Slovenes delegation pronounced for the independence of Albania in the borders of 1913. This diplomatic attitude was determined by the strong Italian-Kingdom of Serbs, Croats and Slovenes rivalry in the Adriatic and in Albania. The Belgrade government was willing to have in its south-western borders a small Albanian independent State rather than an aggressive neighbor as Italy on Albanian land, which would urge the destabilization and dissolution of the multinational Kingdom of Serbs, Croats and Slovenes state.

On the other hand, Kingdom of Serbs, Croats and Slovenes government was thinking to place Albania under its political influence through E. Toptani, by supporting his ambitions to come to the head of Albanian government and state (Fischer 2004, 34).

Meanwhile, Belgrade diplomacy connected its attitude towards Albania with that of the two other neighboring states. The Kingdom of Serbs, Croats and Slovenes Memorandum submitted to the Conference in February 1919 stated that if the right of invasion to protectorate in some parts or the entire Albania of 1913 would be recognized for some other country, then, for 'protection of its vital interests', Kingdom of Serbs, Croats and Slovenes reserves the right to require the part that 'belonged to it'. This double attitude of Belgrade would continue throughout the Peace Conference and it aimed at achieving two goals: a) to separate the conflict between Rome and Belgrade for land division between the former Austro-Hungarian Empire, for which both parties had claims, from that of the division of Albania, as foreseen in its Treaty of April 1915; b) to place Kingdom of Serbs, Croats and Slovenes in the same footing with Greece and especially with Italy for Albanian State division and not allow them to exclude it from this division as Italian diplomacy was trying to do so. So the previous Austrian-Italian rivalry for Albania was replaced by the Italian-Kingdom of Serbs, Croats and Slovenes antagonism (Fischer 2004, 45).

## THE POSITION OF ITALY

On its part, the Italian government aimed at ensuring first of all the possession of Vlora, as an important geostrategic point in the Southern Adriatic and putting over the Italian protectorate the "Albanian autonomous state", that was foreseen to be established on the "Muslim" Middle Albania (Montanelli 2005, 12). Also Rome demanded that this protectorate or control should be extended possibly to the borders of Albanian of 1913. Italian delegation neither did nor presents these claims immediately to the Conference, as the Greek delegation did. Italy did not make this immediately because it was listed among the winning Big Powers that has organized the Conference and gave themselves some special rights compared to other smaller winning countries. In addition to this, there were contradictions for the future of Albania not only among the three rival neighboring countries but also among the three main powers of the Conference.

## THE USA POSITION

The USA, Great Britain and France did not have the same attitude for the political and territorial future of Albanian state. Discussion at the Conference demonstrated that they had agreements and contradictions as well. Initially, because of not having a good knowledge about the Balkan issues, Washington accepted the view of London and Paris, according to which the independence of Albania and territorial integrity of the Albanian state would be sacrificed for the interests of neighboring countries, winners of World War I, though Albania

had been neutral to the war and normally did not have to pay for it. In order to justify this attitude, representatives of the European big powers evaluated the international recognition of Albania in 1913 as an independent and sovereign state as a premature action (FRUS 1942, 59). The intentional, large and deafening propaganda that considered the economic-social life of Albanian people primitive, especially the one that came from neighboring countries had undoubtedly influenced the representatives of European politics.

Consequently, it was decided that Albania should be included in the system of mandates, established at the end of the world war for the countries and peoples that had not yet won their independence and would need to be under the tutelage of a 'civilized power' to lead them towards independence. In this way, Albanians were unjustly included in the group of people that would detach from the dissolved multinational states, as Ottoman Empire and Austro-Hungary, peoples that were colonized by defeated Germany.

The three big powers to the Conference also came to a common opinion that this power should be Italy, which had required since the war the protectorate form. It would demand the control over Albania in the form of mandate over Albania even during the Peace Conference. Representatives of the three powers manifested for the first time their readiness to place the post-war Albanian state under the mandate of Italy in May 1919, in the framework of efforts to satisfy claims in Albania and in the Adriatic and they were repeated in September 1919, after the request for the mandate submitted officially at the end of August by the new Foreign Minister of Italy T. Tittoni (DDI 1952, 170).

W. Wilson confirmed to his colleagues of Great Britain and France, Ll. George and G. Clemenceau on 6 May 1919 that "Albanians are terrified by and despite the idea of subjugation to Italy", however he agreed with their views. Having left Paris at the end of June 1919, though he recommended to R. Lansing, his Secretary of Foreign Affairs to take care about the 'fate of Albania' and 'her rights' he accepted in the middle of September 1919 the issue of mandate of Italy over this country, Albania. However, W. Wilson took care to set conditions to it so that "exploitation or colonization" of Albania could be avoided (FRUS 1942, 345). The decision of American diplomacy to give the mandate to Italy was naturally dictated by the aim to iron out Italian-SCS contradiction on one side, but as it seems also by oscillations and indeterminations of Albanian delegation in Paris.

The three big powers submitted their approval to recognize Italy's mandate over Albania in the Memorandum of 9 December 1919 that they submitted also to the Italian delegation in the Conference. The Memo attached to this Memorandum states that the three powers do not lack the will to recognize the independence of Albanian state, but "this state that will need the administrative advice and assistance of any of the Three Big Powers. From its geographical position and from its economic capacity, Italy is the most appropriate State to carry out this duty" (Macmillan 2006, 149).

The specific provisions of the mandate and Fundamental statute of Albanian state would be drafted by a commission composed of three members, one of which would be the representative of Rome government, one from the League of Nations and the third would be

the representative of Albanian state. The latter would be appointed not by Albania, by its institutions, but by the main winning powers. These provisions (of mandate and Statute) would be approved by the Council of the League of Nations that was founded at the end of World War I and which the mission of preventing armed conflicts among the states and to preserve peace in the world.

The project that was drafted at the Peace Conference in 1919 for placing the post-war Albanian State under Italy's mandate violated the independence and sovereignty that it won some years ago. Besides, the Albanians were treated in a discriminatory way. They did not respect for it even the procedure that Covenant of the League of Nations provided for. Albanian people were not asked to give their opinion with regard to the state to which the mandate would be commissioned as provided for by Article 22 of the Covenant. These attitudes disregarded also the statements of Albanian delegation in the Conference which opposed the inclusion of Albanian in the group of countries over which the system of mandates would be applied. Representatives of the three powers of the Conference agreed not only upon Albania's independence violation but also on the other more important issue, violation of territorial integrity of the Albanian state in order to favor further neighboring countries by approving some of their claims. None if these powers objected the placing of Vlora region under the sovereignty of Italy and neither the transfer of Gjirokastër region within the political borders of Greece. Because of their geo-strategic position, Vlora and Gjirokastër became a prey, the first of Italy for its control over Otranto Channel and the second of Greece to dominate the Corfu Channel (Duka 2007, 70).

Regarding the other annexationist claims of neighboring countries, the representatives of the three powers kept differentiated attitudes. The USA representatives took care not to fragment further the regions of Albanian state, whereas the representatives of Great Britain and more those of France, having deep contradictions with Italy, were inclined to narrow further the geographical space of Albanian State, on which the Italian mandate would be extended. These contradictory attitudes were noted since the beginning of the Conference, when in February 1919 the four winning Big Powers (Great Britain, France, Italy, and the USA) created the committee to review Greek claims.

The representatives of London and Paris expressed their opinion in the report that this committee submitted in March 1919 that the entire southern Albania should be transferred to Greece, whereas Americans came out with a proposal that only Gjirokastër region would be transferred to Greece from the mountain of Nemërçkë down to the seaside, whereas the Korça region should remain within the border of Albania. Worried by the fact that their claims were not yet reviewed, but also coveting Albania with no partners, Italians pronounced for preservation of borders of 1913 in the south. As a consequence of these contradictions, the issue of Albanian-Greek border remained open (Puto 2009, 45). The Conference work started with the review of the Peace Treaty with Germany (to be signed in Versailles, near Paris, on 28 June 1919) (Macmillan 2006, 54). The three main powers were interested in this, Great Britain, France and USA. Claims of Italy over Albania started to be discussed in April 1919,

together with her demands for lands of former Austro-Hungarian Empire, which lay mainly along the Adriatic coast. The merge of these two issues was not random, it related to London Treaty of April 1915 (with Articles 4-7), according to which the Adriatic Sea from the north to its south was conceived from the military-maritime point of view as one whole, an Italian lake which should serve for Italy's strategic 'defense'. Consequently the eastern coast sea, from Vlora in the south up to Dalmatia and Trieste in the north, was demanded to be placed under Italian control, regardless of whether it was inhabited by Albanian and Slav people, that is, non-Italians.

Faced before such claims that violated the ethnic principle, the USA representatives, free of London Treaty obligation, came against the annexationist claims of Rome government over those territories. However, they accepted in the meantime the concept of Italy's 'security' in the Adriatic and based on this, they accepted the territorial extension of Italy to some strategic positions along the coast. So, in the memorandum of 14 April 1919 addressed to the Italian government, American President Wilson accepted the Italian possession of Polas in the north, an island in the central part (in Dalmatian coast) and possession of Vlora in the south of Adriatic, considering them sufficient for control of this sea by Italy (DDI 1954, 456). The attention that American delegation and specifically the President W. Wilson paid to Albanian question by reviewing also the territorial demands of Albanian party, pronouncements of the delegation head in some cases to the benefit of Albanians, testify that USA, or the American diplomacy was the only among decision makers of the Peace Conference that was concerned in some way that the territories given to Albania in 1913 remain (Macmillan 2006, 160). The USA attitude could be noticed in the Memorandum of 9 December 1919 and openly in February-March of 1920, in the period after the Conference, when W. Wilson opposed strongly the English-French-Italian plan of 13-14 January of that year, which in essence implemented London Secret Treaty of 1915 that fragmented Albania badly and nullified its independence. The Memorandum of 9 December came as a need for the coordination of the attitude for questionable issues among representatives of USA, Great Britain and France.

In this Memorandum they submitted the same opinions for the 'Adriatic issue' Resolution, and their views regarding the claims of the three neighboring states in Albania, of Italy and the two Balkan states. The drafting of the 9 December document is actually considered more as a view of the American representatives. Pursuant to it, full sovereignty over Vlora and its entire region was recognized for Italy, Kingdom of Serbs, Croats and Slovenes was allowed only the right of the commercial exit in the northern Albania by leaving thus unaffected the borders of 1913, whereas no common opinion was reached about Albanian-Greek border. However, according to the Memorandum of 9 December, Greece would invade Albanian lands of Gjirokastër region that lay in the west of Nermërçkë Mountains, including Tepelenë and Kurvelesh. The invasion of Gjirokastër region was only one step towards its annexation by Greece. The future of Korça remained again subject to negotiations among representatives of USA, France and Great Britain on one hand, which



possessed the right to speak on behalf of Albania, and representatives of Italy and Greece on the other hand (FRUS 1942, 345). Meanwhile, this Memorandum did not satisfy Rome, because of the Resolution given to Fiume issue, neither Athens for the reservation held towards the future of Korça. It infuriated more Belgrade that saw it excluded from division of Albania and in military difficult defensive positions related to Italy. According to the Kingdom of Serbs, Croats and Slovenes delegation, the powers were interested only in the 'strategic security' in the Adriatic. In these conditions, Belgrade delegation, headed by N. Pasic, in the note sent to the Conference on 8 January 1920, defended again the attitude expressed in February 1919, according to which his government preferred the establishment in the borders of 1913. The note of N. Pasic stressed also that if the proposal would be rejected again, Belgrade would demand the annexation of northern Albania down river to Drin River, promising in this case to give a local administrative autonomy to Shkoder. The Kingdom of SCS delegation demanded now a 'more favorable' border for Belgrade, from the economic and strategic point of view. In this case there was no mention of 'correction of borders', as the Kingdom of SCS memorandum of 8 January stated, but annexation of all territories on the right side of Black Drin and Buna Rivers, and mountains of Kelmend and Krasniq.

To satisfy further the neighbors of Albania, especially the Kingdom of Serbia, Croats and Slovenes, the Prime minister of Great Britain and France, D. Lloyd George and G. Clemenceau, in the absence of USA representatives, reached a compromise on 13 January 1920 with the Italian counterpart, Nitti, according to which Albania would be divided among the three neighboring countries, almost in the same way as London Treaty of 1915 provided for. According to this compromise, Fiume would be transferred to Italy, whereas the Kingdom of Serbia, Croats and Slovenes would receive as compensation the northern Albania with the center in Shkoder, which would enjoy 'the autonomy' like that of Rutene region in Czechoslovakia.

Greece would annex Korça and Gjirokastrë, whereas Italy would be given the sovereignty over Vlora and its region, and the mandate over the remaining part of Albanian state of 1913. The USA intervention to oppose the British-French-Italian plan saved Albanian state. The determined attitude of the USA President W. Wilson, regardless of problems with the political opponents in Washington and his health situation, gave time to Albanians to organize the resistance that started in Lushnje Congress, which did not accept the Italian mandate and rejected any further foreign mandate. After this, resistance would continue with Vlora War, in order to regain the sovereignty of Albania over this region. In this way, regarding Albania and the Albanian Question, Peace Conference of 1919-1920 sanctioned not only the unjust decision of the Conference of Ambassadors of 1913, but it designed also a new division of Albanian state territories. The Albanian representatives reacted against those injustices, but again with no outcome.

## THE ATTITUDE OF ALBANIAN DELEGATION


The disregarding attitude of the Peace Conference for national rights of the Albanian people and neglect of the proposal that Albanian delegation submitted to this Conference on 7 March 1919 for the organization of a plebiscite in Albanian territories that were left outside the borders of Albanian state, urged this delegation to look for other political means in order to save the country from the risk of a new division. But delegation members did not reach a common opinion about the further steps that they should make. A part of it, composed of Memhet Konica and Dr. Mihal Turtulli, joined also by Mithat Frasheri (who was still in Switzerland), though that a strong critical attitude should be kept against the claims of Italy, in which they saw the main source of that new drama that was being prepared for Albania (Macmillan 2006, 159). They thought that they would change with this critical attitude against Italy the image created for the delegation, to prove that it was not an annex to Rome representatives as it was spoken among diplomatic circles, but they had gone to Paris to protect the national rights of Albanians and to oppose those who violated these rights.

There were also many delegates, member of the Albanian colony in USA, Turkey and Romania that were against Italian demands over Albania. Among them were Mihal Grameno, Parashqevi Qiriazi, Halil Pasha Alizoti (Gjirokastra), Fuat Dibra, Pandeli Evangjeli, Ibrahim Temo. The other part of the delegation composed of Turhan Pasha Përmeti, father Luigh Bumci, and Luigj Gurakuqi (the latter was appointed instead of Mithat Frashëri), though that they should follow the way of non-confrontation and non-exacerbations to achieve a compromise with them which would be based on respect of independence and preservation of territorial integrity of the country. These contradictions led to the creation of two separate groups of governmental delegation. Their separate actions started in April 1919, when news spread for the start of 'Adriatic issue' discussion at the Conference. So, fractions sent to the Peace conference one Memorandum each on the same day, on 14 April. In the Memorandum submitted to the Conference, the fraction of Konica-Turtulli, which held the American-English orientation, used a very strong tone against the aim of Italy on Vlora and it highlighted the negative consequences that Italian protectorate would have for Albania first of all from the demographic point of view. In this memorandum was stressed the dangerous Italian attitude to colonize Albania (Puto 2009, 103). However, the members of this group did not come before the Conference with their proposal to recognize the complete independence of Albanian state and, starting from this demand they objected the plans of representatives of big powers to place it under the mandate of a foreign state. Knowing the internal issue that existed in Albania and trying to stabilize the Albanian state and to avoid the Italian mandate, they required the placing of the Albanian independent state under the temporary mandate of the USA, or some other distant power, that 'did not have' direct interest in Albania and the Balkans as well. In the 14 April's Memorandum, the other fraction, with the pro-Italian orientation, demanded for a certain time until Albanian state would recover not the establishment of the mandate system, but the 'assistance' system, stressing

the 'benevolent assistance', of one of the big powers that the Albanian government would chose. This power, as the Memorandum implied, would be Italy, the 'assistance' of which would be such that it should be compliant with the Albanian independence and sovereignty and it should not be used by Rome to colonize the country. The proposal of this fraction shows that it tried to avoid the mandate over Albania. But, as Memorandum of April 1919 demonstrates, all Albanian delegates in Paris accepted the transfer of Albanian state by one single power. The group of Turhan Pasha, joined by Mustafa Kruja and later by two other government members, Mehdi Frasheri and Mufit Liboohva (who arrived in Paris at the end of April), made efforts to reach a bilateral agreement with Rome Government. In order to avoid the sovereignty over Vlora Region, they decided to recognize the 'strategic and maritime' interests of Italy in this region by accepting, it Italy would guarantee the territorial integrity of Albanian State, the military invasion of Sazan, Karaburun and Zvornec, and the construction of a maritime military base in Pashaliman. These cessions were proposed to the Italian part on 28 May 1919, but their authors received no reply for it. However, after one full month, on 28 June, the group of Turhan Pasha made changes in the delegation composition. The delegation head was appointed father Luigi Bumci instead of Turhan Pasha. Avoidance of Turhan Pasha, who was once an Ottoman Empire ambassador, as it seems, related to the purpose to change somewhat the image ascribed malevolently to Albania by foreign propaganda as the 'small Turkey'. The delegation members would be Mehdi Frasheri, Luigi Gurakuqi and Lef Nosi. However, Turhan Pasha remained again as prime minister, whereas Mehdi Frasheri was appointed as Foreign Minister instead of Mehmet Konica. These changes were made by the 6 government members that were in Paris, who acted in the name of the other cabinet members that were in Durres. On the same day, on 28 June in the meeting of the 6 government members, stresses that the delegation headed by L. Bumci would continue to fulfill its activity, on the principle of Albanian state territorial integrity, independence and sovereignty" (History of Albania 2005, 289). After one month, in July, some unexpected event happened that alarmed Albanian political circles and the Albanian public opinion. The new Italian Minister of Foreign Affairs, Tomasso Tittoni, signed an agreement with the Greek prime minister, E. Venizelos on 29 July 1919 for settling their contradiction (including those for division of Albania) and to support the claims of each other before the Peace Conference. This aggravation of international situation for Albania had a profound impact on Albanian representatives in Paris. At the end of July, Turtulli-Konica fraction joined the other part of Albanian delegation, from which it had detached since April. In this case, M. Konica was accepted to remain a delegation member, whereas, Dr. M. Turtuli would be lowered to the level of advisor delegate. The representatives of colonies in Paris made the same step in those days; they decided to cooperate with the delegation headed by L. Bumci. Meanwhile, the news was spread in September 1919 for acceptance of Italian mandate over Albania by the powers caused a new debate among Albanians in the French capital for the method of objecting this Conference approval. Most of the representatives of colonies required from the governmental delegation to come before the Peace Conference with the demand for an

entirely independent state as the only diplomatic means to avoid the mandate. But willing to guarantee necessarily to Albanian state 'a benevolent and temporary assistance', this delegation came out with another proposal. In its Note addressed to the Conference on 9 October, the governmental delegation stressed that this 'assistance' could be given to Albania without establishing the mandate institution, but "through a reasonable change and in accordance with the spirit of the time and the needs of the country, with provisions of London Conference of 1913 on establishment of the Albanian state" (History of Albania 2005, 290). According to the delegation, there were two changes that should be made in the status of 29 July: First, a foreign Prince should become the head of Albanian state as in 1913, with the difference that the Prince now should be of Italian origin (from Savoia Royal House) and accompanied by foreign armed forces (which did not happen in 1913), which should be Italian and will stay in Albania temporarily until Albanian state would be stabilized. They would be as escorting or accompanying forces to the prince and not as invaders of the country. The second change concerned Albanian's neutrality. This neutrality should be restored and 'guaranteed' collectively by the powers as in 1913, with the difference that, if necessary, these powers would commission Italian government "to implement the guarantee condition" (AQSH 1919, 12). The 9 October's Note addressed to the Conference was associated by the delegation request to be summoned by the Conference to hear its views about the issue related to the future of Albania. This request had been repeated several times but it had not been accepted. It was only in February 1919 that Albanian delegation was summoned and heard for the first time by the Council of the Ten in the Conference. The Albanian delegation communicated with the Conference only by correspondence. In these conditions of discrimination by this international forum, when the Italian party was silent about Albanian delegation proposals and it was not showing any availability for compromise, the delegation made another step. The delegation presented to the Peace Conference a new Note with several proposals at the end of December 1919 intending to avoid the partition of the country. This delegation accepted to recognize some cession to the neighbors: Kingdom of Serbs, Croats and Slovenes, the free transit of goods in northern Albania; 'internal autonomy' of Orthodox communities of Korçë and Gjirokastër; for the 'security' of Italy in the southern Adriatic, it stated that it was ready to submit to the Conference such a variant that preserved the sovereignty of Albania over Vlora and over its region. In this case, they thought that Italy should be allowed to build a 'rented' military maritime base in Orik (Pashaliman) and recognition of Sazan island invasion. But, as previously, these proposals fell on deaf ears. Finding no support in the Conference, Albanian delegation sent two of its members to Rome at the end of 1919 to require the help of Pope. The delegation headed, the Catholic clergy, father Luigj Bumci met the Pope in January 1920 without reaching any conclusion resistance so as to prevent with it the achievement of an unfavorable equilibrium for Albania in the negotiations between big powers. The foundations for organization of this resistance were laid in Lushnje Congress (Duka 2006, 230). The Congress decided to *de facto* independence for Albania.

## CONCLUSION

It can be concluded that the USA was the major player of that time. Albania was recognized as an independent state. The world learned that even in very difficult and crucial circumstances, Albanians demonstrated their readiness and determination to protect the independence of their national state. They appeared as a factor that should be necessarily taken into consideration after this. Following the USA, by the end of 1920, Great Britain too would make diplomatic movements in favor of Albania. Facing London pressure, Rome withdrew from its attitude to prevent admission of Albania to the League of Nations on 5 December. Albania became a member of this organization on 17 December. After this, the efforts of Italian diplomacy would focus on prevention of Kingdom of Serbs, Croats and Slovenes, and Greek intentions towards the Albanian state in order to guarantee a privileged political and economic position of Italy in Albania. With the statement of 9 November 1921, signed together with France, Great Britain and Japan, Italy guaranteed the first, but, facing British opposition, it did not achieve for the second time. 

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## THE JAPANESE DIPLOMACY IN ASIA: EVOLUTION AND CHALLENGES

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**Abstract:** *The diplomacy of Japan towards its Asian neighbours has always been a complex issue. Throughout the years, the foreign policy of Japan has witnessed severe alterations specifically after the Second World War. Since then, new challenges and opportunities have risen which have formed a new, adapted Japanese diplomacy, albeit not disconnected from its traditional aspects and its past. The current purpose of the paper is to highlight these evolutions and challenges of the post WWII Japanese diplomacy. The focus will be on the two main neighbours and traditional partners of Japan, the People's Republic of China and the Republic of Korea. There will be an effort to highlight the challenges that Japan experiences with the aforementioned countries, its diplomatic approaches and how these could be evolved in the near future.*

**Keywords:** *People's Republic of China; Republic of Korea; Japan; Diplomacy; History; Foreign Policy*

### INTRODUCTION

The Japanese diplomacy and foreign policy in Asia is a rather complex issue. Diplomacy could be rather defined as the constant pursuit of national interests and achievement of these objectives via peaceful means. However, as it always has been, factors such as the regional and international environment, the domestic political context, values and ideology, are heavily determining the diplomatic approaches of each country. Japan is no exception to that common rule. The Japanese diplomacy's historical background is full of alterations as it is evolving for hundreds of years. Until today at a certain extent, the



traditional self-perception of the role of Japan in the region and subsequent challenges that follow it, still play a major role to the articulation of its foreign policy. Japan's openness to the world in the XIX century was a major event in terms of the diplomatic history of the country. Nevertheless, that does not mean that its foreign policy starts at that very moment. The Japanese diplomacy has deep roots into the past. Long traditional relationships with China and Korea for example, do exist long before the Meiji Restoration and the end of the *Sakoku* period, key historical events of the modern Japanese history associated with the analysis of the foreign relations of Japan. In fact, even at the isolation (*Sakoku*) period, the Tokugawa shogunate had established bilateral exchanges with China, Korea and the Dutch, proving that the diplomatic history of the country is much richer than it seems (Yasunori 2013). However, the focus of the current paper is not attached at the historical overview but instead it emphasizes on the current Japanese diplomacy in Asia. Short briefs and historical overviews will be made in order for the evolution and current challenges of Japan towards its neighbors to be better understood. The essay will be divided into two main chapters. The first one will be focusing on the Japanese diplomacy towards China, its long standing partner and rival with approximately two millenniums of bilateral engagement; The second one will emphasize in an another important player in the region, South Korea. The current paper will indicate and analyze the current diplomatic issues and challenges between Japan and its two significant counterparts, the main diplomatic approaches of the Japanese governments after the end of the World War II and its potential evolution at the near future.

## THE JAPANESE DIPLOMACY IN THE REGION

First of all, before proceeding to the current case studies, some main key elements of the Japanese diplomatic framework in Asia must be noted. The traditional diplomacy of the country was always seeking recognition and understanding by its neighbors. That has driven its policy choices for a long time especially before World War II, when Japan considered itself to be responsible of leading Asia, as the main great power in the region. Its post war diplomatic approach varies in the way that Japan now portrays itself as the bearer of the international order in the region, pursuing its recognition as a provider of economic advancement and political stability in Asia (Kazuo 2015). That approach of course is a key point of friction with China due to the country's unprecedented economic and military rise.

In addition, as mentioned above, many factors also determine approaches at the foreign policy domain. As a result, the Japanese diplomacy is rather complicated. Firstly, there are the domestic factors. The rise of nationalism in Japan, public opinion and party politics are heavily influencing the foreign policy decision making. The political leaders, for instance, both in government and in opposition, are heavily engaged in the diplomatic domain, focusing on the sensitive diplomatic issues, sometimes even more than the MFA bureaucrats themselves (Wan 2016). Secondly, there is the external environment. The US-Japanese Security Treaty and alliance are shaping the responses of Japanese diplomacy in many cases

regarding its bilateral relations, especially with China. When for example the Trump administration decided to prohibit purchases of the Chinese telecom giant Huawei, because of the current US-China trade war, Japan also re-regulated certain domestic rules regarding procurement procedures, in order to also exclude the Chinese firm (Wijaha and Yuma 2019). It is well understood that constraints on foreign policy choices do exist and the degree of external pressure, specifically by the US due to the significance of their bilateral relationship, is highly valued and calculated.

Third, the Japanese diplomacy is heavily value oriented. Identities and values play a major role at its shaping. Japan considers itself a democratic peaceful nation with a mature market economy, being an example in the East Asia/South East Asia region (Yoshimatsu 2012). This perception has driven Japanese diplomacy to reach other countries with similar value-sharing, such as Australia and India. The line of "shaping an arc of freedom and prosperity" as introduced by Abe's government in 2006, led to a series of negotiations and bilateral agreements, shaping in the mean time a more active diplomacy in contrast to the more passive approach which was adopted after the end of WWII (Yoshimatsu 2012). Examples of such agreements are first of all the 2007 Joint Declaration on Security Cooperation between Japan and Australia and the Japan-India Strategic and Global Partnership, which included 35 areas of cooperation specifically on the security domain (Wan 2016).

Fourth point of the diplomacy in Asia is its economic aspect. Economic diplomacy of Japan has always been the major tool of its foreign policy. Japan is pursuing its interests by securing economic benefits abroad, expanding its trade and investment capacity and providing at the same time financial and technical support to developing countries. Key historical moments of the country's economic diplomacy are the membership at the OECD in 1967, following its G7 membership in 1975. Furthermore, through its Official Development Assistance programs, Japan was and still is heavily expanding its influence mainly in the South East Asian countries, despite the fiscal deficits the country is facing. In 1997, Japan contributed more than 9 billion US dollars through the aforementioned program (Beaurdy and Cook 1999). It has also endorsed more than 20 concrete projects with the Mekong countries. Specifically, approximately 500 billion yen have been invested to official development assistance in Cambodia, Laos and Vietnam, a diplomatic measure aiming at countering China's influence in the region (Yoshimatsu 2012).

Last but not least, the unresolved issues of the past are a burden of Japan's foreign policy. History has long been interfering with the Japanese diplomacy, shaping at a large extent its bilateral relations in the region. The Yasukuni Shrine visits and the issue of Comfort Women, which will be presented in the parts that follow, are some example of these 'shadows' of the past that even after decades are still shaping the main foreign policy lines. These underlying issues make the bilateral relationships, especially with China and Republic of Korea, fragile and difficult to handle (Wan 2016).

To conclude, taking into account the aforementioned approaches and challenges, the post war diplomacy of Japan has been structured under two main pillars that remain at the largest extent unchanged: Focus on the economic development; aversion to the use of military force. Japan, until now, has focused mainly at its economic growth relying for security on the United States (the post war Yoshida Doctrine), utilizing it at the same time as a diplomatic tool, declaring its pacifism and its respect for the universal values of freedom, democracy, human rights and the rule of law (Kowashima 2017). Even after the end of the Cold War, there is a strong urge for Japan to become a 'normal' state and even if some progress towards becoming a stronger political and military actor in the region has been made, these main basic approaches still exist.

Lastly, another major pillar has been added, that of the 'Free and Open Indo-Pacific'. Japanese diplomacy is heavily engaging to this strategy in order to protect its interests, especially in the maritime area. It is referring mainly to the protection of trade and shipping lanes in a geographical area including the Asia-Pacific region to Middle East (Japanese MFA 2019). More specifically, the strategic objectives of Japan, according to the Diplomatic Book of 2019, include the promotion and establishment of free trade and the rule of law in the region, pursuing in the mean time economic prosperity and peace. These objectives are overall interpreted as the evolution of the Japanese diplomacy from an overall passivity to a more active role trying to consolidate its interests in the region of Asia and beyond.

## THE JAPANESE APPROACH TOWARDS CHINA

Besides the general trends of Japanese diplomacy as indicated above, which dominate the foreign policy thinking of the post war era, China is an interesting case study indicating different approaches and challenges regarding Japan. The bilateral relationship could be safely characterized as complicated with a lot of positive aspects and disputes. An improvement started to appear with the normalization of their bilateral relationship which came in 29 September 1972. Then, the following period of 1982-1990, when China found itself isolated due to the Tiananmen Square incident, was cleverly exploited by the Japanese diplomacy in order to enhance their bilateral relationship. Sharply thinking, Japan achieved both pleasing its western counterparts by contributing to sanctions in China and also appeared as a bridge between the latter and the West (Wan 2016). Overall today, the Japanese diplomacy is focusing on three principles towards China as expressed by the Prime Minister in 2018: shifting to collaboration and not competition; being partners instead of threats; achieve a free and fair trade (Wijaya and Yuma 2019). The economic diplomacy of Japan is heavily focusing on the cooperation and expansion towards China achieving today an unprecedented interaction. More specifically, the two countries represent approximately more than 15% of global GDP, with China being established as the second strongest economic power, surpassing Japan, pulling more than a billion people out of under-development (Meyer 2011).

According to the Japanese MFA, the two countries are characterized by “close economic relations”, since there are vast numbers of Chinese tourists traveling to Japan, large trade imports and exports and people to people exchanges. It is indeed well noted that their trade numbers of imports and exports were approximately 1 billion US dollars in 1972 when the normalization of their diplomatic relationship took place. In 2014, the same trade figures touch 312,4 billion US dollars (Wan 2016). This excessive economic interdependence that has been created the last decades is a crucial factor shaping leadership’s decisions in the foreign policy of both countries.

However, the main issues of their bilateral relationship have not been resolved. The Japanese social thinking, and as a result its foreign policy approach, views China as a rival and a threat. Consequently, their relationship remains controversial in political, historical and security aspects (Kuwashima 2017). The main issues that still exist today are first, the Senkaku/Diaoyu dispute,<sup>1</sup> second, Taiwan, and third, the ‘shadows’ of the past. Historical issues concerning the imperialistic past of Japan and war crimes towards its neighbors is intensely political challenging the Japanese diplomacy through the years. Other minor issues still exist such as the issue of chemical weapons which have been discarded in Chinese territory and the Kokaryo dispute which refers to a Tokyo student dorm that is not yet decided if it belongs to China or Taiwan (Wan 2016).<sup>2</sup>

Regarding the Senkaku dispute, the country’s policy makers were focusing on the usage of diplomatic bargaining and the utilization of international norms (Yoshimatsu 2012). In the specific case, the main diplomatic response adopted for years was laying aside the issue and changing the focus on other domains of cooperation. The basic foreign policy approach was following the ‘Middle Line’ policy in the East China Sea, something that China does not accept and participating with China in the joint development of the Shirakaba gas field found in the area (Wan 2016). However, that slightly changed after the regime transition in 2009 when the Democratic Party (DPJ) took over the power. The general economic context of the financial crisis that heavily affected Japan was also a negative factor. But the key event that triggered the dispute and tested Japanese diplomacy was the fishing boat collision of 2010 (McCurry 2010). The decision of the DPJ leadership to arrest the captain of a Chinese fishing boat, which collided with the Japanese vessel near the Senkaku islands, was signaling a new approach to the dispute: there is no recognized territorial dispute in the area and the collision is treated as a domestic affair in a Japanese territory (Wan 2016). The upcoming

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<sup>1</sup> The Senkaku (in Japanese)/Diaoyu (in Chinese) dispute is referring to the country’s territorial dispute regarding an island chain in the East China Sea between the two countries. Both China and Japan claim the islands and the surrounding area as their own territory for historical and economic reasons since research has shown that the seabed around the islands is rich in gas and oil reserves.

<sup>2</sup> The Kokaryo dispute is referring to a student dorm which was created in the University of Kyoto in Japan for Chinese students in 1945. The Nationalist government of China, which fled to Taiwan after the end of the civil war, purchased the dorm from its Japanese owner in 1952. In the decades to come, Taiwan followed legal actions in order to evict students from the mainland China even if Japan has recognized Beijing as the legitimate government. The legal battle and different rulings continue until today with diplomatic repercussions for Japan itself, especially regarding towards its relationship with Taiwan.

nationalization of the islands by the following government in 2012 provoked massive unprecedented demonstrations in China, bringing their relationship to the lowest point since the normalization.

Japan's diplomacy has as a result changed for the first time regarding the issue, getting harsher and away from its past practices. The following 2012 LDP victory in national elections approved that change and the overall foreign policy towards China became rigorous as a response to the nationalistic Japanese sentiment. The diplomatic trend from that point onwards was the following: strengthening the US-Japan alliance; allowing the Japanese military to operate outside its borders under specific circumstances; promote international cooperation in defense R&D; counter the rise of China by seeking and creating new alliances (Wan 2016).

Regarding the historical issues, they are found again in the front row of the foreign policy challenges. The end of the Koizumi administration was characterized by a short period of calmness regarding the issue, with a foreign policy line of holding no visits to the Yasukuni Shrine. That changed along with the emergence of the disputes in the East China Sea and Prime Minister's Abe visit to the Shrine in 2013. The temple is considered to be, by Japan's neighbors, as the main symbol of the Japanese imperialism and military past. The prime ministers' visits throughout the years, was seen as paying homage to Class A war criminals enshrined there who were the main contributors to the Japanese war crimes and colonialist past (Kazuo 2015).<sup>3</sup> The official diplomatic approach of Japan expressed by its Prime Minister Abe after his visit, is that the Shrine should not become a political issue and the purpose of the visit is to "pledge that Japan will never wage war again" and to "report before the souls of the dead" how the country's administration is advancing (Prime Minister of Japan Statements 2013).

Lastly, the third main challenge of the Japanese diplomacy is Taiwan. Japan has been heavily interested on the issue especially since the 90s, recognizing its high significance. The Taiwan Strait is the route for strategic shipping lanes to Southeast Asia and Middle East, being a vital key area for the Japanese national interests (Wan 2016). As a result, the relations between Taiwan and Beijing are of high interest for Japan. In the mean time, any alteration of the relationship between the two or between Taipei and Tokyo has an impact on the bilateral approach of China forming an interconnected political 'triangle'. The official Japanese position regarding the confrontation between China and Taiwan remains unchanged since 1972. Japan, in the Joint Statement of 1972 that normalized its relations with Beijing, accepted the 'One China Principle' encouraging in the mean time "a peaceful resolution of issues concerning Taiwan Strait through dialogue" (Wan 2016).

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<sup>3</sup> The Yasukuni Shrine is a Shinto temple in Tokyo founded in 1869, honoring those who died for the country listing mainly names of the dead. Unfortunately, among the almost two million names there are around a thousand convicted war criminals. For that reason, official visits of the Prime Minister or the Emperor provoke reactions to the neighbor countries, accusing Japan of honoring its imperialistic past and its atrocities by paying homage to the names of the criminals.

The Japanese diplomacy accepts that principle, refusing however the adoption of the “Three No’s” policy, as adopted by China (Wijaya and Yuma, 2019).<sup>4</sup>

## THE JAPANESE DIPLOMACY TOWARDS SOUTH KOREA

South Korea, or else the Republic of Korea (ROK), could also be a perfect example showing the complexity of the Japanese foreign relations. On the one hand, ROK is forming a political strategic ‘triangle’ with Japan and the United States creating a firm alliance in Northeast Asia, in order to protect their common interests against the Chinese military and economic rise and North Korea’s nuclear threat. On the other hand, Japanese diplomacy is struggling to keep some balance in the bilateral relationship with their main ally in the region. A number of issues between the two make the cooperation and mutual trust extremely difficult and complicated. The main challenges are the issue of Comfort Women,<sup>5</sup> the Yasukuni Shrine visits, history textbooks, the Takeshima/Dokdo territorial dispute<sup>6</sup> and the “Sea of Japan” name dispute (Kimura 2019).<sup>7</sup>

It is important to stress out that since the establishment of their diplomatic relations in 1965, their relationship today has reached an all time low. The language on the Japanese Diplomatic Bluebook of the 2019 is rather strict on the description of their bilateral relationship. Taking into account that in previous diplomatic statements the ROK was characterized as “important neighbor” with “extreme close relations” that “share the same values” (MoFA 2010) or more recently as an “important neighbor” who “shares strategic interests” with Japan (MoFA 2016), the current rhetoric is rather different. Today the main statement to begin with in order to describe the relationship and diplomatic approach of Japan, is that their relationship “face an extremely severe situation” blaming indirectly the ROK’s leadership for that evolution (MoFA 2019). Beginning with the main issues, the Takeshima case and the ‘Sea of Japan’ name dispute, the Japanese diplomacy possess a strict approach. It does not recognize any dispute, firmly stating that Takeshima Islands are a part of Japanese territory as well as claiming that the internationally accepted name of the maritime region under question stands as ‘Sea of Japan’. The statements from the Ministry of Foreign Affairs also mention that “historical facts” and the “International Law” are supporting Japan’s position, that the Sea of Japan is the “only international established name” and more

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<sup>4</sup> The ‘Three No’s’ is a policy adopted from China towards Taiwan that characterizes its basic approach towards it: No independence of Taiwan, No to ‘two Chinas’ or ‘one China and one Taiwan’ and No to the membership of Taiwan in organizations with the status of a state.

<sup>5</sup> As ‘comfort women’ are characterized women and girls who were used as sex slaves by the Japanese army in occupied territories during the Second World War, mainly in the Korean Peninsula. There is different perception between South Korea and Japan regarding if the issue is permanently resolved.

<sup>6</sup> The Takeshima (in Japanese) / Dokdo (in Korean) is an island chain that both countries claim as their own territory. It is a similar case as the Senkaku/Diaoyu one, as presented above.

<sup>7</sup> The Sea of Japan is a maritime area between Japan, Russia and the Korean Peninsula. South and North Korea have raised objections towards the international name and the former country argues that the current name became common when Korea was under Japanese rule.



or less the Japanese diplomacy indirectly accuses the South Korean leadership of making efforts to rewrite the history between the two countries (Ryall 2019). The landing of members of the ROK's National Assembly on the Takeshima Islands, as well as the military exercises that took place there, have deteriorated the situation (Yamasaki 2016).

Nevertheless, the rest of the challenges are not less significant. The different historical perceptions are still on the discussion table and aggravate the public opinion in both countries as well as augment their nationalistic sentiments. Regarding the issue of Comfort Women, Japan has indeed participated in discussions with the Republic of Korea achieving a bilateral agreement and the establishment of a taskforce to review its implementation (Kimura 2019). According to the Japanese diplomacy, the issue is finalized and "irreversibly closed" blaming the South Korean leadership of creating more claims regarding the issue and trying to reform the agreement (MoFA 2019). The ROK's initiative of building 'comfort women statues' in front of the Japanese Embassy in Seoul, triggered stricter reactions where Japan denied any further negotiations on the issue, declaring the official closure of the bilateral agreement and accusing ROK for deteriorating their relationship (Kimura 2019). Regarding the issues of history textbooks and the Yasukuni Shrine, the problem is the same as explained in the previous chapter. South Korea has adopted the same position as China towards these issues, considering them as symbolic moves of Japan of honoring its imperialistic past and colonialism era. The Japanese diplomacy has refused the allegations made, as already mentioned in previous pages.


## CONCLUSION

The Japanese diplomacy in Asia is apparently multifaceted. As it happens with all sovereign states, some foreign policy lines remain strictly untouchable when others are more adaptable to change. The Japanese diplomacy in Asia is a mixture of these two elements. Issues concerning Senkaku and Takeshima are not discussable but in other domains, such as the issue of the Comfort Women, changes have been made trying to find a common ground. As indicated throughout the paper, the main policy lines Japanese diplomacy use, are at a large extent attached and dependent to the US foreign policy choices as well as other past practices. Being more specific, regarding the Sino-Japanese relationship, the first case study of the paper, the Japanese diplomacy faces difficulties in order to find alternative approaches. The Senkaku/Diaoyu dispute seems to be impossible to be resolved in the near future. China has already surpassed Japan in nominal GDP terms and its military rise has established the country as a regional and international great power that will not accept a compromise. Japan, will also not. The 'Middle Line' policy option, which Japan provided China regarding East China Sea, splitting the maritime region in half, has not been accepted by China. Two facts must always be kept in mind as well. First, nationalistic sentiments are not going to be diminished in either of the two countries; second, historical burdens will still exist since neither of the two countries seems to be eager to participate in sensitive historical discussions.



Also taking into consideration how public opinions shape foreign policies at a significant extent, it is more likely that the current status quo will remain as such.

The second case study is a different story. Republic of Korea is the main ally of Japan in the region. Their two common threats of North Korea and China are more than real and require immediate attention and close cooperation between the two countries plus the United States. Nevertheless, the burden of the past seems to be at the moment an extremely sensitive issue. The Japanese diplomacy has adopted an approach of denying new discussions on issues like Comfort Women and other historical incidents, considering them officially resolved. The Takeshima territorial dispute could also escalate rapidly. Japan is not recognizing a dispute at the area while South Korea, driven mainly by the public emotion of the mass, is acting as the islands are its own territory confronting Japan directly.

Finally, the Japanese diplomacy in Asia is also focusing on promoting its values and its influence mainly by economic means. Japan always saw itself as the responsible power to lead the region and as a bridge between West and Asia, being the example of economic development and prosperity. The XXI century has changed this reality. Historical challenges must be resolved and the Japanese diplomacy must show adaptability and flexibility given the fact that it is *per se* constrained due to the incapability of Japan of being a strong military power. Given the current situation and how the regional affairs are evolving, the *status quo* will, at a large extent, remain unchanged as well as the main trends of the Japanese diplomacy. The future though is unpredictable and more potential aggressiveness in the region will oblige the Japanese foreign policy to adapt and find solutions in unpleasant topics. 

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# THE *SUI GENERIS* NATURE OF THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION

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**Abstract:** *The Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA) due the contracting parties include a large number of involved countries, which fact creates an ambiguous possibility of various implications in the worldwide business practice considering the different national legal systems. In my paper I am using a deductive approach to the relationship between the theory and the research with an emphasis on the two research questions: Why the ISDS (Investor State Dispute Settlement) from CETA sparked the greatest attention?, and What is causing the legal discrepancy between the CETA's provisions on hard copy and the possible implementation in business practice?. My paper is focused on the implications from the CETA's concluding in the business practice, taking into consideration that CETA is a combination of strengths and weaknesses, opportunities and possible threats.*

**Keywords:** *Comprehensive Economic and Trade Agreement; CETA; Sui Generis; International Trade Law; European Union; ISDS; Investor State Dispute Settlement*

## INTRODUCTION

The Comprehensive Economic and Trade Agreement (CETA) with Canada is one of the most ambitious and progressive trade agreements the EU has ever concluded. It offers companies in both the EU and Canada new opportunities for transatlantic trade and investment, giving EU exporters — large and small — much improved access to one of the world's most developed markets (European Commission 2017).

CETA analyzed through the prism of the contracting parties, it is presented to the public as an Agreement from which everyone will have an enormous benefit considering the scope of the Agreement for example like abolition of customs duties, open and non-discriminatory access to the market, better mobility for employees and protected large variety of geographical indications for high-quality food products. But, besides the previous mention enormous possibilities and the significantly more like the developing of good practice, supporting the investment in healthy environment, stimulation of economic stability and social development, CETA is an Agreement that has become recognized for the criticism from the general public as a negative consequence due the negotiation process that was kept in secret for a long period of time. The fact that the negotiations for CETA were kept in secret for a very long time created the deep space for possible disagreements and conflict between the entities, while at the same time the potential risk of unsuccessful coordination in the field of international trade policy is within the bounds of possibility to happen.

Without doubt the conclusion of CETA sparked significant public reactions and in spite of everything that was bring into attention like the environmental protection, sustainable development, lower prices for consumers while upholding the EU's high standards such as those on food and product safety, the ISDS (Investor State Dispute Settlement) was on the top of the discussions. The new investment court system presented as a court system which will offer certainty and predictability to investors, while protecting the public interest didn't 'safeguard' the contracting parties from the public protests, petition and campaigns leaded on the behalf of many organizations, trade unions and social movements that were organized across the Europe. During the course of those events the public delivered a message to the contracting parties that they are rejecting the ISDS as a system which is on the side of the corporations and demand new set of global regulations and principles for the multinational corporations.

Giving consideration to the previous mention, while analyzing CETA's Investment chapter, I research the possibility of double interpretation: on the one hand is the benefit and justification for achieving the purpose for which is concluded this chapter in CETA, but on the other hand it can also be interpreted as contradiction that resulted with dissatisfaction and confusion due the formulation of the Agreement's provisions. With my research I would like to make a contribution to the analysis of a *sui generis* agreement such as CETA and to observe the alternatives that are *pro et contra* the formulation of the specific provisions in this Agreement.

## THE ECONOMIC RELATIONSHIP AND THE NEGOTIATION PROCESS OF THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION (CETA)

Thanks to CETA, Canadian and EU businesses will now compete on a truly level playing-field. That will create a host of new opportunities on the Canadian market for EU companies, especially smaller ones with up to 250 employees, which together account for 99% of all companies in Europe. In fact, with CETA Canada has agreed to give EU companies better conditions for doing business than it gives to companies from other countries (European Commission 2017). CETA from the contracting parties is described as one of a kind agreement that will set the standards for concluding all the future trade agreements because it has unique structure. The chances for progress of the small and medium enterprises will come into sight in view of the fact that they are very often in unfavorable position on the market where the rules of the 'game' are set by the gigantic companies. Another positive implication in the business practice is the elimination of fees, so the export is expected to grow and gradually increase as a positive implication from the concluding of this Agreement. CETA includes modern rules on investment that preserve the right of governments to regulate in the public interest including when such regulations affect a foreign investment, while ensuring a high level of protection for investments and providing for fair and transparent dispute resolution. CETA will not result in foreign investors being treated more favorably than domestic investors. CETA does not privilege recourse to the investment court system set up by the Agreement. Investors may choose instead to pursue available recourse in domestic courts (Official Journal of the European Union 2017).

In the Investment chapter from CETA is incorporated innovative aspect in the content of the provisions that resulted with intriguing repercussions in the field of international trade and investment law. But, not so captivating for everyone and modern as it is presented in the Joint Interpretative Instrument on CETA mention before taking into consideration the petition 'Rights for People, Rules for Corporations – Stop ISDS!', as listed on its website in the blog by Alex Scrivener on July 16, 2019 named CETA – It's not too late to stop it: "So here we are again. Trying to stop the EU-Canada trade and investment deal CETA. We've been fighting this one for a while. CETA was first proposed back in 2009. It was later dubbed the "little sibling" of the more famous EU-US deal TTIP. It is pretty much just as bad as TTIP though as it also includes ISDS – the obscure system of 'corporate courts' that allows multinationals to sue countries for standing up for their citizens" (Scrivener 2019).

This petition has a characteristic focus precisely on stopping the ISDS, called 'Rights for People, Rules for Corporations – Stop ISDS!' as listed on its website it was launched last year across the member states of the European Union on the behalf of their whole alliance of over 200 organizations, trade unions and social movements and they are fighting for more rights for the citizens in comparison with those of the corporation's (Alliance Rights for People, Rules for Corporations – Stop ISDS! 2020). One of the biggest challenges concerning

this initiative is stopping ISDS and according to the leaders of the initiative, corporations without the constitution of the ISDS have already tremendous financial power and there is no need for establishing a separate system that will provide more rights on the behalf of the corporations. Furthermore, this movement has the tendency to give importance to the fact that corporations increasingly have an expansion of their power and due to this reason, reducing the rights of corporations and achieving a balance between their financial benefits and obligations is more than inevitable needed.

Under CETA, foreign investors still receive extraordinary legal rights to sue governments for measures that may negatively affect their investments. These protections, which are not available to domestic investors or ordinary citizens, would expose taxpayers to huge financial liabilities and threaten to chill public policy. Although the text mentions a so-called right to regulate, the clause is a guideline and does not adequately protect public interest regulation (Canadian Centre for Policy Alternatives 2016).

Giving consideration to the initiative for stopping ISDS, the commitment for building a world of solidarity and the aspiration for dispersion of the corporations' power, while the leaders of this campaign consider the ISDS as a global threat that concerns democracy, rule of law, environmental protection, human rights, health, public services, consumers and labor rights is reasonable. Why reasonable? In view of the fact that the aversion about ISDS's constitution is a result referring to the implications from the superior position coming out of the corporations in the business practice when actually it is necessary a limitation of their benefits and remodeling of the corporate privileges. It's not difficult to be aware why there were a lot of public gatherings for stopping the ISDS, in order to have more responsibilities on the behalf of the corporations and rules that are effectively implemented. The dissatisfaction against the ISDS is reasonable because from one point of view we have the presentation of CETA as an agreement that will provide the greatest condition for the general public, while in the same Agreement we have the ISDS which is defocusing the attention from the importance of the ordinary citizens and consideration of their interests.

The inclusion of a set of investment protection standards in CETA and a dispute resolution procedure which caters exclusively to foreign investors – and which are not available to domestic investors – clearly violates the mandate that foreign investors should not benefit from greater rights than domestic investors (International Centre for Trade Union Rights 2016).

## THE FORM, SCOPE AND THE PROVISIONS OF THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION (CETA)

A trade liberalization agreement between two or more states can be a complex process that may take a number of years to complete, especially if the agreement covers a wide range of issues, as is the case with the discussions aimed at reaching a CETA between Canada and the EU (House of Commons Canada 2012). Considering that CETA contains

many provision such as national treatment and market access for goods, trade remedies, investment, mutual recognition of professional qualifications, international maritime transport services, telecommunications, electronic commerce, competition policy, intellectual property, trade and sustainable development, transparency and dispute settlement and etc. (Canadian Government and the European Commission. CETA 2016), made this Agreement to have an enormous scope that is confusing for the wider public.

The weaknesses that are arising from the concluding of CETA the contracting parties tried to keep under wraps by launching a marketing campaign with intention to produce a positive effect on the entire procedure, representing CETA as a chance that has not been available to consumers, investors and all involved in the business community till the concluding of this Agreement. The contracting parties set up the ambitious aims in CETA as helping the companies to sell more services with the abolition of customs duties, promoting high-quality investment, new possibilities for selection and new opportunities for observing products or services for the consumers or the potential consumers. Buyers will benefit on the grounds that they will have a new open market and they will have new alternatives that previously were not available to them. But, the open market for goods and services will not mean that standards will be reduced or changed in a negative connotation, because standards relating to health, safety, customer safety or the healthy environment will have to be respected, without any exception and stay uphold high.

One of the biggest issues arising from the concluding of CETA is the creating and the establishment of the Tribunal. The CETA Joint Committee shall, upon the entry into force of this Agreement, appoint fifteen Members of the Tribunal (CETA, Article 8.27.2 Constitution of the Tribunal, 59). The Members of the Tribunal shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognized competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in particular, in international investment law, in international trade law and the resolution of disputes arising under international investment or international trade agreements (CETA, Article 8.27.4 Constitution of the Tribunal, 59). The Tribunal shall hear cases in divisions consisting of three Members of the Tribunal, of whom one shall be a national of a Member State of the European Union, one a national of Canada and one a national of a third country. The division shall be chaired by the Member of the Tribunal who is a national of a third country (CETA, Article 8.27.6 Constitution of the Tribunal, 60).

Intriguing part from the Agreement is the one that is dedicated to the ethics of the appointed members of the Tribunal. It is stated that the Members of the Tribunal shall be independent. They shall not be affiliated with any government. They shall not take instructions from any organization, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest (CETA, Article 8.30.1 Ethics, 63).

But what brings into question the bias, objectivity and ethics in this situation when is in question the establishment of the Tribunal in CETA? The biggest concern that is always in the



center of public debates is that the ISDS creates the space for foreign investors to make direct or indirect pressure on the Governments to meet their aspirations and targeted goals, imposing the fear in the public about the possibility of initiating billion worth lawsuits.

CETA establishes strict rules of ethical behavior for the Members of the Tribunal which guarantee their full independence and impartiality. Situations where a Member of the Tribunal can act as a counsel or an expert in pending or new investment disputes are prohibited. Further, CETA has a binding code of conduct for the members of the Tribunal. The code is based on the ethical rules of the International Bar Association, subject to further revision. It prevents conflicts of interest. In case a member of the Tribunal is found not to comply with the code, he/she will be replaced. That decision is taken by an independent outside party - the President of the International Court of Justice and not by the remaining Members of the division of the Tribunal hearing the case as is often the case in existing agreements (European Commission 2016).

The argumentation in the above mention statement from the European Commission is insufficient and creates the deep space for another concern on the behalf of the general public. The qualifications of the Tribunal members are only provided with the non-obligatory words SHALL and DESIRABLE, which in no case is a guarantee that the members of the Tribunal are going to fulfill their obligations with independence and objectivity in solving the dispute, for which they have been selected. In the previously mention provisions from CETA, it's easy for perceiving that there are countless qualifications and rules that should be fulfilled by the selected members that are going to be part of the Tribunal, while nowhere exactly is specified in which way they are going to prove the preferred competencies.

## THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION (CETA) VERSUS THE BUSINESS PRACTICE

With the signing of CETA, questions arise concerning the magnitude of the benefits and impacts, as well as how they will be distributed. Liberalizing trade is intended to bring benefits through greater specialization (based on comparative advantage). This is the projected effect on the overall economy, but the impact on sectors could be uneven (Office of Parliamentary Budget Officer, Canada 2017).

Regardless the benefits that were emphasized by the contracting parties, it is not really straightforward how CETA is going to enhance the lives of the citizens of EU member states and Canada. Is that going to be achieved with the new range of possible alternatives which will not lower the quality and the same will stay on a level that fulfills all the quality standards of the products? Perhaps, it is about the opportunity of the workers' mobility, helping them to be more competitive in the labor market, to find better jobs, better possibilities and the transit of the companies? Or maybe, it is about the claiming from the contracting parties that CETA will allow the companies in European Union member states to

invest outside the borders of the European Union under such enormous benefits with elimination of the barriers for investment and the equal and fair treatment for the investors?


CETA's chapter 8, section F on the "resolution of investment disputes between investors and states" grants corporations the right to bypass national courts and directly file highly enforceable multi-billion euro compensation claims against states in international tribunals. But the tribunals are not judicially independent. Rather, they have a built-in, pro-investor bias (Corporate Europe Observatory 2016).

Having in mind the above mention initiative 'Rights for People, Rules for Corporations – Stop ISDS!', the free access to the market for goods and services and circulation of movement does not always mean stimulation of opening new jobs, but on the contrary it can mean loss of existing, inequality in the distribution of the labor market and fragmentation in the concentrations of certain work positions. If the rights of the workers are protected by CETA, there is no reason why the workers would sign the petition and went to public protest to prevent the concluding of the agreement. One business society undoubtedly can't have a sustainable development without the arrangement of meaningful investment strategies with accredited foreign investors, concluding agreements that will reinforce the economic progress and stimulation of the economic activity with the involvement of the corporations.

But, one society can't evolve if the human factor is forgotten because that human factor from the general public is the main taxpayer who is maintaining the progress of one society and the voice of the human factor needs to be heard, needs to be discussed and needs to be a priority. A key challenge is for the contracting parties is to undertake responsibility for creating a strategy where there would be a constructive dialogue between the investors and the general public, to actively include the general public and to establish the most appropriate structure of policy which is acceptable for the both sides. The contracting parties need to identify the issues and to strengthen the approach towards the problem in a way that supports the public opinion, which approach is going to value in the same time the public interest and the interest of the investors, in terms of economic growth and high value investment policies.

## CONCLUSION

It is indisputable that the Comprehensive Economic and Trade Agreement between Canada and the European Union has unique form which is distinctive from the others type of agreements, but the original constitution of this Agreement does not always mean that the - *specific formation*- should be interpreted in positive connotation by default. The Agreement embolden the discussions about its disputable nature in relation to the dilemma who is truly protected and privileged in the provisions of CETA, especially taking into consideration when the economic and legal justification of the provisions are in question. The provisions of CETA are not really categorical is the corporate 'confrontation' going to be transparent and unambiguous and who is going to take the economic benefits from the implementation of

the Investment chapter from CETA in the business practice. Achieving the balance between the corporate interest and the public interest is truly complex and difficult objective for realization, but giving consideration to the fact that CETA is a crucial part in the elaboration and interpretation of future international trade agreements and future international investment agreements of this kind, the same should be indicator how some provisions should not be formulated idealistic in the final version of the Agreement. Before being incorporated in the agreements, the implementation of the provisions in business practice should be analyzed in detail by the potential contracting parties, so they will not allow the possible creation of legal discrepancy between the hard copy contractual provisions and the contractual provisions in business practice. Indeed, that is the solution how the provisions of CETA will achieve the balance between the rights and obligations of the investors by strengthening and reinforcing their corporate responsibility and liability. Extremely important for fostering the economic growth and economic progress in a society is the attracting and stimulating the expansion of investments, this is actually the purpose of the international trade agreements that makes the concluding of CETA clearly justified. But, the contracting parties should always pay attention to the possible abuse of power that is given to the investors, to be mindful that the desire for profit maximization can be beyond doubt dangerous and the ability of the states to regulate the public interest by raising the level of protection of the investment standards still leave the opportunity for maltreatment of those standards. Appreciating the analysis above, my conclusion is that CETA will achieve its original objective presented by the contracting parties, when the economic and legal interest will be justified without being at the charge on the public interest. 

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# REFOCUSING THE EUROPEAN UNION ATTENTION ON THE WESTERN BALKANS: THE IMPACT OF THE BERLIN PROCESS

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**Abstract:** *The expectations of the Western Balkans (WB) on the EU membership perspective could have been 'undermined' with the halt in the EU enlargement process as declared by the former European Commission President Jean-Claude Juncker in 2014. In the meantime, even though the WB countries were part of the EU's regional approach through the mechanism of Stabilization and Association Process (SAP) working on the implementation of the Acquis Communautaire, the slowing down of the integration process could have economic and political consequences and threaten the regional stability. This paper shows how the Berlin Process (2014) was the proper intergovernmental initiative taken by some EU Member States to keep alive the EU integration perspective of the WB, thus refocusing the EU attention on the challenges the WB was facing on the way towards EU integration.*

**Keywords:** *Western Balkans; Berlin Process; European Union; EU Integration; Regional Cooperation*

## INTRODUCTION

The EU membership perspective for central and eastern European countries including the Western Balkans (WB)<sup>1</sup> has been confirmed and reconfirmed during the history of bilateral relations between the EU and these countries. A similar accession strategy used with the central and eastern European countries through the so-called 'Europe Agreements' was also applied with the Western Balkans through a mechanism called the Stabilization and Association Process with the eventual signature of 'Stabilization and Association Agreement'.

<sup>1</sup>In this paper, the term Western Balkans (WB) is used for the following group of countries: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia.

However, due to the specific circumstances relating to historical, economic and political factors, the EU integration process of the WB proved to be long in time and challenging in terms of fulfilling the appropriate EU membership criteria. In 2014, “the building blocks of a decade of EU-Western Balkan policy were no longer solid enough to drive the enlargement process forward. Croatia’s accession in 2013 did not result in a fresh push and resolve to move ahead with the remaining six countries who remained entangled in structural difficulties which had been exacerbated by the economic crisis” (Flessenkemper 2017, 25).

The Berlin Process (2014) launched for the Western Balkans aiming at supporting and keeping alive their EU membership perspective, represented a unique instrument by its nature since it was an intergovernmental initiative taken by some EU countries and at the same time enjoying the full support of the EU. All this, due to insufficient progress of the WB in the EU integration process and the continuing challenges they have been facing was a fact which brought a temporary halt in the EU enlargement process.

Therefore, the launch of the Berlin Process was designed as a necessary initiative in that regard – namely – to keep the WB countries committed and energized towards their common prospective project – that of EU membership. In the following, the paper will focus on issues such as: the confirmation of the European Perspective for the WB; the challenges hampering the EU integration of the WB; the halt in the enlargement process and the possible consequences for the WB; the launch of the Berlin Process; a new impulse for connectivity and regional cooperation; the impact of the Berlin Process on the EU-WB summit held in Sofia (2018), as the first EU-WB summit held in the last fifteen years (since the Thessaloniki Summit in 2003) as another sign of refocusing the EU attention on the region while focusing on joint treatment of the challenges the WB were facing on their way towards the EU.

## CONFIRMING THE EU PERSPECTIVE FOR THE WESTERN BALKANS

The EU membership perspective for the Central and Eastern European countries including the Western Balkans (WB) had firstly been confirmed with the Copenhagen Criteria<sup>2</sup> (1993) and then reconfirmed in the subsequent European Council meetings: in Corfu<sup>3</sup> (1994), in Essen<sup>4</sup> (1994), in Cannes<sup>5</sup> (1995) and in Madrid<sup>6</sup> (1995). Since that time, the WB countries

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<sup>2</sup>“The European Council today agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required” (European Council in Copenhagen, Conclusions of the Presidency, 21-22 June 1993, parag. iii, 13).

<sup>3</sup>“At the Copenhagen meeting in June 1993, the European Council decided that the associated countries of Central and Eastern Europe which wished to do so could become members of the European Union as soon as they were able to fulfil the relevant obligations” (The European Council Corfu, 24-25 June 1994, Conclusions of the Presidency, parag. 1.13, 14).

<sup>4</sup>“The European Council confirms the conclusions of the European Councils in Copenhagen and Corfu that the associated States of Central and Eastern Europe can become members of the European Union if they so desire and as soon as they are able to fulfil the necessary conditions” (The European Council Essen, 9-10 December 1994, Conclusions of the Presidency, parag.1.13, 12).



have consistently been in the sights of the EU. The EU presence through the implementation of different programmes of financial assistance aiming at the reconstruction and stabilization of the region has been of immense importance.

Additionally, it is clear that at the beginning of the 90's considerable financial assistance by individual EU Member States as well as different international monetary institutions and donors to the WB countries has also been accorded. All this, was mainly and mostly dedicated to the recovery from economic backwardness, rule of law, stability, democracy and human rights in the WB as these countries had newly emerged from earlier economic and political systems and also suffering the consequences of wars in Yugoslavia which resulted in its dissolution.

In the following years, the EU launched an intensive approach for the WB through the Stabilization and Association Process (SAP 1999) as a new mechanism of financial assistance accompanied with the prospect of EU integration. Achieving contractual relations - the signature of an eventual Stabilization and Association Agreement (SAA) between the EU and the respective WB country was the core element of the SAP. The SAA itself consisting of respective rights and obligations represents the roadmap for the associated countries on their way towards the EU. Following on from the SAP, the EU integration perspectives for the WB had also been confirmed in subsequent EU-WB summits and in this regard, the EU "reaffirms the European perspective of the countries participating in the Stabilization and Association Process and their status as potential candidate for membership in accordance with Feira conclusions" (Zagreb 2000, 2). The EU integration perspective for the WB was also confirmed when it was stated that the EU "effectively support(s) the European perspective of the Western Balkan countries, which will become an integral part of the EU, once they met the established criteria" (Thessaloniki 2003, 8).

## THE CHALLENGES HAMPERING THE EU INTEGRATION OF THE WESTERN BALKANS

In the SAP as the mechanism used for the gradual EU integration of the Western Balkans, the progress ahead has been assessed based on the individual efforts of each country and depended on fulfilling certain given criteria. In practice, the WB countries have been facing challenges touching many tangible issues, mostly interconnected to the past and affecting the present relations between them, and accompanied with consequences making

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<sup>5</sup>"The preparation of the associated countries for integration into the internal market is, as was affirmed by the Essen European Council, the main element of the strategy of preparation for accession. The associated countries themselves regard such preparation for integration into the internal market as a priority" (The European Council Cannes, 26-27 June 1995, Conclusions of the Presidency, parag. 1.32, 17).

<sup>6</sup>"The European Council also confirms the need to make sound preparation for enlargement on the basis of the criteria established in Copenhagen and in the context of the pre-accession strategy defined in Essen for the CCEE; that strategy will have to be intensified in order to create the conditions for the gradual, harmonious integration of those States, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment" (The European Council Madrid, 15-16 December 1995, Conclusions of the Presidency, parag. 1.25(6), 18).

their EU integration perspective to be challenged. On the way towards the EU membership, the most challenging issues for the WB countries, which simultaneously proved to be the key components, are also provided for by the SAA (Stabilization and Association Agreements) as in the following: Political dialogue (Title II, SAAs); Regional cooperation (Title III, SAAs); Approximation of laws, law enforcement and competition rules (Title VI, SAAs); and the area of justice freedom and security (Title VII, SAAs). While progress in three of the key components is mainly dependent on the internal efforts of the WB countries, when it comes to the regional cooperation - this is the field where the common efforts of the countries concerned have been necessary - and in fact where the lack of cooperation among the WB has mostly and permanently been evident. Such a lack of cooperation has coexisted and occasionally prevailed over the ongoing joint regional initiatives, conferences and summits in which the Western Balkans became part, such as:

- The Organization of the Black Sea Economic Cooperation (BSEC, 1992);
- The South-East European Cooperative Initiative (SECI, 1996);
- The South-East European Cooperation Process (SEECP, 1996);
- The Stability Pact for South Eastern Europe (1999);
- Adriatic Ionian Initiative (AII, 2000);
- The Danube Cooperation Process (DCP, 2002).

In this regard, the above mentioned regional initiatives in which the WB have taken part, have always enjoyed unequivocal EU support and in fact some of them were held with the EU initiative, thus transforming the EU into the main mechanism to increase the regional cooperation in the Western Balkans. Furthermore, it should be taken into account that the regional cooperation has always been considered as key element of EU integration in which the WBs should pay particular attention as a field where substantive progress is immediate. This has been an expressed EU demand in all the summits and initiatives relating to the European integration of the Western Balkans (such as: Copenhagen Criteria, 1993; Stability Pact, 1999; Zagreb Summit, 2000; Thessaloniki Summit, 2003). It is also emphasized that the regional cooperation and reconciliation is necessary and *sine qua non* condition to move forward, especially when taking into account the past of the region with conflicts and the consequences suffered. Regional cooperation in the western Balkans is:

- needed as a crucial ingredient of stability;
- a catalyst for reconciliation, good-neighborliness and good political relations;
- about helping overcome nationalism and intolerance and promoting mutual understanding and political dialogue in the region (European Commission 2005, 4).

Nevertheless, as the European Parliament (in 2015) had noticed, the EU strategy to the WB based on a regional approach being implemented through the SAP including in itself a set of components such as: trade liberalization, financial assistance, security dimension focused on cooperation in the area of justice, freedom and security as well as a regional

dimension of increasing regional cooperation and good-neighborly relations, reconciliation in the Western Balkans, and on the other hand imposing set of politically sensitive conditions, an increased focus on good governance criteria and the redefinition of the existing monitoring mechanisms were a heavy load for the WB on their way towards the EU. However, some sixteen years after the launch of the Stabilization and Association Process with the EU, Western Balkan countries (apart from Croatia, which managed to join in 2013) are still far away from EU accession (European Parliament 2015, 13-14). Still, fulfilling the membership criteria remains a key element of the EU enlargement policy and at the same time the biggest challenge for the Western Balkans. A “credible enlargement policy is a geostrategic investment in peace, stability, security and economic growth in the whole of Europe. The EU and its partners aspiring to membership face common opportunities but also challenges like migration, organized crime and terrorism. Preparing the countries concerned to meet all membership requirements continues to be one of the EU’s key political priorities” (European Commission 2019, 10-11).

### THE HALT IN THE ENLARGEMENT PROCESS AND ITS IMPACT ON THE WESTERN BALKANS

The progress achieved by the WB countries toward fulfilling the EU accession criteria has been limited. It may be said that since the launch of the SAP (1999), with the exception of Croatia’s EU membership (1 July 2013), in the EU-WB relations, the only remarkable progress achieved by the Western Balkans is the successful completion of the visa liberalization process. Even though, not including Kosovo which is still under the EU visa regime, all the other WB countries, Montenegro, North Macedonia and Serbia (2009) as well as Albania and Bosnia Herzegovina (2010) have achieved that. Nevertheless, with regard to the EU accession process, all the WB countries with no exception have been facing obvious difficulties on their way forward. The lack of appropriate progress was pointed out by the European Commission in 2014 which consequently announced a five year halt to the enlargement process.<sup>7</sup> It should be taken into account that the enlargement is historically considered as one of the most successful of the EU’s foreign policies and an effective transformation mechanism for all the Central and Eastern European countries as it has contributed to the consolidation, development and properly addressing their political, legal and economic challenges on their way towards the EU. And, on the other hand, for the WB itself, the EU presence in the region is highly important even in terms of stability and security.

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<sup>7</sup>“In the next five years, no new members will be joining us in the European Union. As things now stand, it is inconceivable that any of the candidate countries with whom we are now negotiating will be able to meet all the membership criteria down to every detail by 2019. However, the negotiations will be continued and other European nations and European countries need a credible and honest European perspective. This applies especially to the Western Balkans. This tragic European region needs a European perspective. Otherwise the old demons of the past will reawaken” (Jean – Claude Juncker, Speech 14/567, EP Plenary Session, Strasbourg, 15 July 2014).

The declared 'halt' in the EU enlargement process could have been a negative signal to the Western Balkans in their expectations and continuing efforts towards achieving the standards for EU membership. In the "medium term, this message could negatively influence the commitment of the region's political elites to implement the reforms that the EU has demanded, as well as negatively impact support for European integration among the population" (European Parliament 2015, 12). Therefore, in order to keep alive the European perspective of the region, in circumstances when the enlargement process was declared temporarily halted, an intergovernmental initiative such as the Berlin Process (2014) has been welcomed as a clear sign and message to the Western Balkans that their EU membership perspective remains priority and the process will continue.

### THE BERLIN PROCESS

The Berlin Process was launched as a supporting complementary mechanism for the WB in their efforts towards the EU. The Berlin Process "is based on three main pillars: (i) regional political cooperation and consolidation, including bilateral dispute resolution; (ii) improved economic cooperation, with a particular emphasis on connectivity in the energy, transport and digital domains; (iii) people-to-people relations with a focus on young people and cooperation with civil society" (Flessenkemper 2017, 27). The Berlin Process firmly underlines the crucial role and the achievements of the EU enlargement policy in the WB and unanimously supports the prospect of European integration for the countries of the Western Balkans (Berlin 2014, 1).

Not being an EU mechanism or initiative, but an intensive intergovernmental cooperation initiative taken by some EU countries (Germany, Austria, France, Croatia, Italy, and Slovenia), the Berlin Process aimed to facilitate the EU integration process for the WB by consolidating efforts and increasing regional cooperation among them. The Berlin Process "did not create a new *Acquis* that would replace the EU's. It did not rest on new institutions, nor did it provide new funding capacities. It was launched as an additive and complementary process, essentially anchored in the EU's normative approach to membership and regional competitive and growth strategy" (Marciacq 2017, 8). The Berlin Process was designed as a multi-dimensional tool consisting of successive WB summits where the participating states of – the 'Western Balkan Six – WB6' (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia) and – the 'six EU Member States' agreed to increase cooperation in the following issues:

- Intensifying regional cooperation, strengthening good governance, increasing prosperity via sustainable economic growth (Berlin 2014, 2-4);
- Regional cooperation and the solution of bilateral disputes, rule of law and good governance, fight against extremism and radicalization, migration, economic prosperity and connectivity, market integration – trade facilitation, mobility and joint

growth initiatives, youth, education, science and research, civil society (Vienna 2015, 1-8);

- Connectivity and trade, priorities to the youth, migration and the fight against terrorism and radicalization (Paris 2016, 3-7);
- Connectivity, regional economic integration and development, private sector and SMEs development, human connectivity – youth, Governance, rule of law and prevention and fight against corruption, science, outstanding bilateral issues, civil society, fight against terrorism, extremism, radicalization and organized crime, preventing irregular migration (Trieste 2017, 3-10);
- Prosperity and connectivity, regional cooperation, security, youth and civil society. While in the context of decisive issues in further enhancing regional cooperation, the signature of the following joint declarations is considered to be of significant importance: Joint Declaration on Regional Cooperation and Good-Neighborly Relations in the Frame-work of the Berlin Process; Joint Declaration on Missing Persons in the Framework of the Berlin Process; Joint Declaration on War Crimes in the Framework of the Berlin Process (London 2018, 1-2);
- Economy, connectivity, good-neighborly relations, reconciliation and outstanding bilateral issues, security. Of a certain importance is the signature of the joint Declaration of Western Balkans Partners on Roma Integration within the EU Enlargement Process and also endorsement of other joint commitments taken in the WB (Poznań 2019, 1-11).

It is clearly evident that the Berlin Process aimed at confirming the continuing EU commitment to the WB in order to keep alive the EU integration perspective for the region and to increase regional cooperation among the WBs focusing on a wide range of areas to implement investment projects which effectively addresses the most needs of the region.

The Berlin Process gave a new impulse to the regional cooperation among the WB. Regarding the Berlin Process, "it is the presence of key EU Member States providing the highest level of political support to the initiative that makes it different from other regional cooperation initiatives (RCI). The clear and unambiguous commitment of those Member States (MS) to the Enlargement in the Balkans, and the immediate embrace they found from the WB6 politicians, defined the success of the initiative, as compared with other RCI" (Hackaj A; Hackaj K 2018, 15). Through this process, certain EU Member States not only initiated the process but also became involved in it by taking part in a series of WB summits where the common challenges and unresolved matters would continuously be discussed as they are key issues for their common EU future. In spite of "its shortcomings, the Berlin Process has 'invigorated' regional cooperation in a way that none of the more than seventy initiatives linking state and non-state actors of social development in the region have previously managed to do" (Marjanović Rudan 2017, 8).

## A NEW IMPULSE FOR CONECTIVITY AND REGIONAL COOPERATION

The launch of the Berlin Process was a way to confirm the EU's continued commitment to the region's accession and to give a new momentum to the enlargement process (European Parliament 2016, 2). In focus of the Berlin Process were issues of great importance for bringing the countries and the people of WB close to each other, discussing the issues of common interest and for their future movement towards the EU. With "its annual summits the process has established itself as a new framework to advance regional cooperation, connectivity, and address questions not covered by EU accession directly, such as youth cooperation, 'reconciliation' and bilateral disputes. The method is entirely intergovernmental" (Flessenkemper 2017, 24).

Taking into consideration the obstacles to regional cooperation and good-neighborly relations among the WB, the Berlin Process aimed at discussing the existing open issues such as: border disputes, political disputes and minority rights among the WB countries. Therefore, in this regard the respective declarations were signed (attached to the final declarations of the London Summit 2018 and Poznań Summit 2019). Among others, given the importance of connectivity for economic growth, educational projects and youth exchange, the Berlin Process also provided investments in infrastructure (i.e. 10 approved projects), respectively in the areas of transport and energy. It is evident that some of the open issues among the WB have been proven to be difficult to solve for decades, therefore the Berlin Process as an initiative was seen as creating opportunities for dialogue, cooperation and a common EU future and to 'remind' the WB of the common values the EU shares and encourage them to work forward together. However, "the question remains whether and to what extent the governments of the Western Balkan countries are committed to substantial use of opportunities created by this process" (Nicić; Nechev; Mameledžija 2016, 25).

Taking into account that the Berlin Process was a time-limited initiative foreseen to take place over four years (2014-2018), even the expectations that it may cover and deal with all the challenging issues in the region were not very high. Looking "closely at the Berlin Process agenda it is clear that there is much at stake making it difficult – if not impossible - to tackle the regional challenges in such a short timeframe and in the intricate multilateral environment" (Emini 2018, 9-10). But, above all, one should bear in mind that the Berlin Process despite its limitations achieved its main objective. It has managed to keep the key EU Member States focused on the region, created such opportunities and opened up the way towards connectivity and cooperation among the WB by giving a new impetus from an exclusively designed process for them and covering issues of core importance for the region itself and for EU integration. It has "succeeded in bringing the political leaders of the region to the same table each year, but also in mobilizing regional initiatives and in setting up the most comprehensive platform so far for regional cooperation between civil society, young people, business entities and of other non-state stakeholders" (Marjanović Rudan 2017, 8).



## THE IMPACT OF THE BERLIN PROCESS ON THE SOFIA SUMMIT

As a follow-up to the Berlin Process, the EU-WB Summit held in Sofia (on 17 May 2018) was a clear sign of EU attention to the Western Balkans and that the integration of WB remains a priority for the EU itself. Since the Thessaloniki Summit (2003), it was the first time the EU was back to hold a summit with the WB with the clear purpose reconfirming the EU perspective to the region.<sup>8</sup> In order to keep the EU and the WB close, the Sofia summit aimed at further improving the relations between the parties and therefore to increase cooperation in the following issues:

- Strengthening support to the rule of law and good governance;
- Reinforcing engagement on security and migration;
- Supporting socio-economic development and putting a special focus on youth;
- Increasing connectivity;
- Setting up a Digital Agenda for the Western Balkans;
- Supporting reconciliation and good-neighborly relations in the Western Balkans (Sofia 2018, 4-7).

In addition to reaffirming the European perspective for the region, the EU has been aware of the challenges the WB has been going through and therefore has shown readiness to share such challenges together by properly and effectively addressing them. As such, it was also concluded in the Sofia Declaration as it reaffirms the EU determination to strengthen and intensify its engagement at all levels of support on issues such as: democracy and the rule of law, especially the fight against corruption and organized crime, good governance, as well as respect for human rights and rights of persons belonging to minorities; good-neighborly relations, regional stability; the implementation of the *Acquis*; security challenges; Common Foreign and Security Policy (Sofia 2018, 1-3). The EU-WB Sofia summit was encouraged by the Berlin Process; it is evident that it has absorbed some of the Berlin Process' topics. It means that over time the Berlin Process has proven its impact on the Western Balkans countries with regard to the issues in which they have to become focused on as they are important for the EU integration.


## CONCLUSION

The Berlin Process for the Western Balkans was launched as an intergovernmental four-year platform composed of annual summits aiming at increasing regional cooperation and contributing to the European Integration process through advancing the EU agenda in three new agreed dimensions: economic growth and connectivity, good-neighborly relations

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<sup>8</sup>"Today we reaffirmed our mutual commitment to the European perspective for the whole region. As I said during my recent visit to the region, the European Union is and will remain the most reliable partner of the entire Western Balkans" (Remarks by President Donald Trump after the EU-Western Balkans summit, Council of the EU, Press 258/18, 17.05.2018).



and regional cooperation, and civil society development and people to people connectivity. When the further EU enlargement with Western Balkans was declared temporarily at a halt due to the WB insufficient progress in the accession criteria, the Berlin Process was proven to be the right initiative which provided a set of issues to work on. Through the areas of cooperation and the themes of discussion in the Berlin Process annual meetings, it has achieved that bridges of cooperation among the WB countries have been built and questions not covered directly by EU accession have been addressed. Furthermore, the Berlin Process also served as a platform where regional countries promoted and exchanged their views with regard to common challenges they are faced with. The Berlin Process contributed to the region by refocusing the EU attention on it and putting the region continuously into focus of active developments in the light of the EU integration process. The Berlin Process to some extent impacted the subsequent EU-WB Sofia summit and will also have its place in the possible contribution to transforming the EU's enlargement policy. 

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## US-CHINA RIVALRY FOR GLOBAL HEGEMONY

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**Abstract:** *This article describes the competition between China and the USA for global hegemony. Both states have hegemonic ambitions and compete with each other over the domination of Asia. The rise of China has transformed global politics, as well as the balance of the global economy. As China's economic and military power increases steadily, its geopolitical ambitions are also constantly growing. Some experts do not exclude the possibility of conflict between China and the USA in the future. There are many potential hot spots in East Asia where conflict could erupt at any time in the future between the USA and China. Many experts doubt whether the USA and China can escape Thucydides' Trap in the future.*

**Keywords:** *Hegemony; Sino-American competition; Thucydides' Trap; Conflict; Domination; Asia; Rise of China*

### INTRODUCTION: THE RISE OF CHINA

In the 1990s, when China was weak, many scholars and experts used to raise a question about a possible rise of China. Most strategic debate about China focused on the issue whether or not China could become a peer competitor of the USA. This issue is outdated and irrelevant nowadays. The rise of China is now a fact. Its economy and military power is constantly growing and it is already competing with the USA in all spheres. The rise of China has transformed global politics, as well as the balance of global economy. We are entering now a world where the USA is no longer the only great power on the planet. We are moving out of the unipolar world to a multipolar world which will be dominated in the future by many great powers. The USA will remain the most powerful state in the international system for the foreseeable future, but it won't be the only superpower in the international

system. The competition between the USA and China will be the defining factor in international politics. Most strategic debate about China now revolves around one question: How china will behave in the future as it rises and will USA be able to stop China's dominance of the world?

Two centuries ago Napoleon predicted the rise of China. Napoleon warned that the rise of China would shake the world. Once he stated: "Let China sleep, for when she wakes, she will shake the world" (Charles E. Boyle, 2004). Now we live in the era when China is beginning to wake up and the world is beginning to shake. China is the world's largest manufacturer and exporter and its economic power is constantly growing. China is now a major contributor to global economic growth. It is now the only plausible challenger to the USA. During the Cold war era, when China was weak, Beijing did not appear to have any expansionist goals. In the XXI century, as China's military and economic power grows, its appetite also increases. Some experts do not exclude the possibility of war between the USA and China in the future. For instance, Professor John Mearsheimer believe that war is inevitable between China and the USA. But he thinks that if the war will break out between these two biggest states, it will be a limited war and not a global war. Global war will not take place, because both states are nuclear powers and have the capacity to destroy the world (Valdai Club, 2016).

As China continues to rise, relationship between the USA and China deteriorates considerably. There are many reasons to believe that the relationship between these two biggest states will worsen in the future. In order to explain why China cannot rise peacefully, we should first understand how great powers behave in the anarchic international system.

## HOW GREAT POWERS BEHAVE IN THE ANARCHIC INTERNATIONAL SYSTEM?

In his scientific article 'Anarchy and the Struggle for Power' John Mearsheimer explains how great powers behave in anarchic international system. According to him great powers fear each other and they do not trust each other. As he states: "There is a little room for trust among states. For sure, the level of fear varies across time and space, but it cannot be reduced to a trivial level. From the perspective of any one great power, all other great powers are potential enemies" (Mearsheimer 2001, 29-54). This anarchic international system forces great powers to act aggressively towards each other. The great powers are rarely satisfied with the status quo and seek hegemony. The great powers are power-maximizers and they want to increase their military and economic power as much as possible (Mearsheimer, 2007). Because of the absence of higher authority, states operate in self-help system and try to be as strong as possible in order to protect their national interests. The best way to survive in this anarchic international system is to be powerful. The great powers are never happy with the power distribution in the international system and try to change the balance of power in their favor. There is mistrust between great powers and they have hostile intentions towards each other.

They have hegemonic ambitions and contradictory geopolitical interests. They compete fiercely with each other and whenever suitable condition arises they fight against each other in order to increase their power. In his book 'The Tragedy of Great Power Politics' Professor Mearsheimer explains that conflict between great powers is inevitable and will never see an end. Because hegemony is the best way to survive in the anarchic international system, the competition between great powers will never end (Mearsheimer, 2014). According to Mearsheimer, great powers have two strategic goals: First, they have to dominate the region, where they are located in, because they know that the best way to survive in the anarchic international system is to become a regional hegemon. Second, after achieving regional hegemony, the dominant state aims to prevent other states to rise and become its peer competitor (Centre for International Policy Studies uOttawa, 2012).

The ultimate goal of every major power is to be a dominant power in the region and then hopefully in the global system. According to Mearsheimer when the USA was in the process of establishing hegemony in the Western hemisphere, it did not have any peer competitors. But in the XX century there were 4 potential competitors: Imperial Germany, Imperial Japan, Nazi Germany and the USSR. So far, the USA managed to defeat all potential competitors: In the First World War, the USA played a crucial role in finishing Imperial Germany. In the Second World War, the USA destroyed Japan. It also played a key role in defeating Nazi Germany. During the Cold War the main competitor of the USA was Soviet Union. During the Cold War, Americans played a central role in containing the Soviet Union, which proved very effective strategy in the long run. Thanks to this policy of containment, the USA managed to get rid of its peer competitor, the Soviet Union. The USA does not tolerate peer competitors and is always glad to get rid of them. Shortly, after the Soviet Union disappeared, the Bush administration made it clear that the USA was number one state in the world and intended to stay in that way. But, the rise of China created a new headache for the USA and many have started to doubt whether or not it can remain number one state in the international system. China is now the only plausible challenger to the USA (Centre for International Policy Studies - Ottawa, 2012).

## THE ISSUES THAT CAN STRAIN RELATIONS BETWEEN THE USA AND CHINA IN THE FUTURE

One might well ask, what issues can strain relationship between the USA and China in the future? What spark would likely provoke hostilities between the USA and China? Well, there are many problematic issues that can cause the escalation of conflict between these two great powers. According to Graham Allison, both states can fall into Thucydides' Trap and then, conflict between them will be inevitable. There are 3 main hotspots in East Asia: First hotspot is the South China Sea, second is Taiwan and third is East China Sea. Apart from these hotspots, the containment policy can also lead to escalation of conflict. Let's first examine the containment policy of China - John Mearsheimer's argument is that if China continues to grow economically over the next 30 years much the way it has over the past 30

years, then it will translate that wealth into military might and it will try to dominate Asia the way USA dominates the Western Hemisphere. The USA will not tolerate any great power to dominate Asia. It is in the strategic interest of the USA to prevent China to become a regional hegemon. In order to achieve this goal the USA will form a balancing coalition in Asia which will include most of China's neighbors. China's neighbors are scared of China's rise and therefore, will join this balancing coalition. If China will turn into a giant Hong Kong, all of China's neighbors will be very nervous and they will unite their efforts in order to contain China and prevent it from dominating Asia. Balancing coalition will consist of the following states: South Korea, Japan, USA, Taiwan, Singapore, Vietnam, India and probably Russia. This will all lead to very intense security competition between the USA and China. (Mearsheimer 2012).

In order to carry out effective containment policy the USA will need to build large number of military bases in China's neighboring countries and has to deploy more troops in Asia pacific region. In the long run this containment policy will lead to the deterioration of relations between the USA and China and can cause the escalation of large scale conflict. In order to understand why the containment policy will lead to a conflict, we should explain a very familiar concept in international relations that is the concept of security dilemma. Security dilemma states that steps that one state takes to defend itself invariably appears offensive in nature to the other state.

The very good example of this is the containment policy. From the American perspective the containment policy is very defensively oriented strategy, the aim of which is to defend China's neighbors from Chinese aggression and contain China. From Chinese perspective, this policy does not look like containment, but it looks like encirclement of China. Therefore, Chinese government will be forced to increase country's military spending and military potential of the country in order to protect Chinese people from 'hostile' neighbors that try to encircle and isolate China. Because of the security dilemma, any measures that Chinese will take to defend themselves will automatically appear very offensive in nature from the American point of view. The states are fearful when other states develop military power because they don't know anything about their intentions. Because of unknown Chinese intentions, Americans will react and will do their best to have as much sophisticated weapons and arms as Chinese have. This could lead to arms race between the USA and China and the situation will resemble very much the cold war, when there was a fierce competition in the military sphere between the USA and the USSR. According to Mearsheimer it is necessary to slow down China's economic growth in order to avoid such a tragic scenario, because if China does not grow economically it cannot turn material wealth into military might and become a potential hegemon in Asia. China is becoming incredibly wealth country and the great fear is that China will turn into a giant Hong Kong. In this case it will become a formidable military power. China is already pouring enormous amount of money into its military with the clear aim of challenging American hegemony in the Pacific. China is developing and modernizing its military force and its strategic aim is to increase military



potential as much as possible in order to be able to challenge the USA dominance in the Western Pacific. Conflict between China and USA seems inevitable because these two strongest states compete with each other over the domination of Asia.

Chinese economic and infrastructural projects such as the Belt and Road initiative is often viewed by Americans as Chinese attempt to challenge the USA primacy in Central Asia, Europe and other parts of the world. So, the question is, can Americans prevent China from becoming a giant Hong Kong?

President Trump's administration is doing everything it can to halt China's economic growth by imposing tariffs on Chinese products. This trade war is a manifestation of Sino-American competition for hegemony and the geopolitical rivalry. The USA will do everything it can to stop the rise of China. We are entering now a new era – The Sino-American Cold War.

James Fanell, former intelligence chief of the USA Pacific fleet challenges the conventional wisdom that the USA military is unsurpassed by any force on this planet. He thinks that there is a high possibility that the USA and China will go to war in the next 30 years. China is waiting for a right moment in order to regain control over Taiwan. James Fannel thinks that by 2035 China is very likely to attack Taiwan. Chinese military was ordered by Xi Jinping to have the capability to take Taiwan by military force. China is building up its military capability in order to be able to confront the USA and regain Taiwan before 2049.


In 2049, the Chinese people celebrate the 100<sup>th</sup> anniversary of the People's Republic of China and their aim is to invade Taiwan before that event. For this reason, Xi has carried out large-scale reforms in the Chinese military and started the modernization process of Chinese armed forces in order to be capable of achieving his long-term military objective. The Chinese believe that they already have capability to conquer Taiwan. Many experts doubt that they actually have that capability, but the problem is that this belief will get stronger over the next 10 years. Therefore, the challenge that USA is facing now is how to deter Beijing from deciding to use military force against Taiwan (Zooming in with Simone Gao, 2020). China has declared that it is not a *status-quo* power. It is in reality a revisionist power which is bent on changing the status-quo in Asia. Apart from Taiwan, the Chinese now have laid claims over a group of small islands in the East China Sea.

The Chinese have disputes with Japanese over little islands known as Senkaku islands and think that they should become Chinese. Moreover, there is a huge dispute over who controls the South China Sea. China wants to dominate this strategic sea which is rich in natural resources and has a lot of oil and gas reserves. China is building artificial islands in the sea in order to establish a firm foothold in this strategic place. The borders are not demarcated between China and its neighboring countries and there is a very fierce competition between them to control strategic islands and various zones in the South China Sea. Apart from China, following countries lay claim over the islands in South China Sea: Brunei, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. The territorial disputes between these countries are so complicated that it seems almost impossible to solve them by

any legal means. China claims 90 percent of the sea, which creates enormous tensions between Beijing and countries of the South China Sea. Conflict can erupt any time in the future between these countries over disputed territories. Neighboring countries of China are weak and desperately need the USA military support to deter China from dominating strategic territories in South China Sea. Therefore, it is in the USA interests, as well as in the interests of the USA allies to increase American military presence in the South China Sea. If conflict will intensify in the South China Sea, then countries of South China may show an interest of joining a balancing coalition with the USA in order to stop the expansion of China and defend their national territories.

According to American Professor Graham Allison there is a high probability of conflict, when a rising power threatens to displace the ruling power. He developed a concept of Thucydides' Trap, which is now well known among scholars and experts. Ancient historian Thucydides explains well why conflict is inevitable when a rising great power challenges the dominance of the ruling power. According to him, it was the rise of Athens and the fear that this instilled in Sparta that made war inevitable between these two strongest states of the Greek World in the V century BC. In his book 'Destined for War' Allison explains why it is so difficult for great powers to escape Thucydides' Trap. He examined from history various cases of rivalry between great powers and came to the conclusion that from 16 cases of rivalry, 12 ended with open conflict (Graham Allison 2017). The Chinese President Xi is already familiar with the work of Graham Allison and thinks that all politicians should work together and make maximum efforts to avoid Thucydides' Trap.

## CONCLUSION

As we have seen above there are many potential hotspots in the East Asia where conflict could erupt any time in the future between the USA and China. China is not a *status-quo* power and has great ambitions to dominate Asia. Of course, the USA will not tolerate this and will do everything it can in order to avoid the development of such scenario. For the USA it is unacceptable for any other great power to establish an exclusive hegemonic control over the Asia and the Western Pacific. Time will show us whether or not the USA and China will fall into Thucydides' Trap in the future. The next generations will see soon if Washington and Beijing will follow in the tragic footsteps of Athens and Sparta. If conflict will take place in the future between these two strongest states, even if it will be limited in nature, it will inflict enormous damage on international trade and global economics. 

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